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FILED

NOV 16 1995

HOWARD HANSON
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

RECEIVED

NOV 16 1995

CHURCH OF SCIENTOLOGY INTERNATIONAL,))
a California not-for-profit religious corporation,))

Plaintiff,))

vs.))

GERALD ARMSTRONG; MICHAEL WALTON;))
THE GERALD ARMSTRONG CORPORATION,))
a California for-profit))
corporation; DOES 1 through 100,))
inclusive,))

Defendants.))

No. 157 680

HUB LAW OFFICES

ARMSTRONG'S
AMENED NOTICE OF MOTION
AND MOTION FOR RECONSIDERATION
OF GRANT OF SUMMARY
ADJUDICATION AS TO TWENTIETH
CAUSE OF ACTION FOR PERMANENT
INJUNCTION; POINTS AND
AUTHORITIES; DECLARATION OF FORD
GREENE

Date: 12/1/95
Time: 9:00 a.m.
Dept: One

TO ALL PARTIES AND TO THEIR COUNSEL:

PLEASE TAKE NOTICE that on December 1, 1995, at 9:00 a.m. in Department One of the above-entitled Court, or as soon thereafter as the matter can be heard, defendant Gerald Armstrong will move this court for an Order reconsidering its grant of summary adjudication as to the twentieth cause of action of the first amended complaint.

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1 This motion is brought pursuant to C.C.P. § 1008 and is based on the fact that the Court's grant of
2 summary adjudication is patently erroneous and unfair and that newly discovered evidence increases said
3 unfairness.
4

5
6 DATED: November 16, 1995

HUB LAW OFFICES

By: 

FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

1 **POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RECONSIDERATION**

2 **I. INTRODUCTION**

3 On a motion for summary adjudication, it is improper for a Court in an exercise of its equity power, to
4 grant a permanent injunction based solely on the content of Armstrong's speech as an "apostate" criticizing
5 what he sees as the immorality of his former religion, while ignoring the fact that Scientology's attorney
6 testified that both parties intended to maintain strict silence about the other?

7 **II. STATEMENT OF FACTS**

8 In response to defendant's argument that the meaning of the contract included an obligation by
9 Scientology to maintain silence with respect to Armstrong (Reporter's Transcript, "RT", Exhibit A to Greene
10 Decl. At 2:15-3:27, 4:15-5:26, 7:1-8:25, 9:14-10:24, 11:19-12:22)¹, the court asserted that it was not
11 required to consider such evidence.

12 "Yes, but the facts, those facts are not relevant, and when one reads Witkin, and you can read it, One
13 Witkin Summary of California Law, it's in section [6]84, page 617, the rules of interpretation of written
14 contracts are for the purpose of ascertaining the meaning of the words used therein. Evidence cannot
15 be admitted to show intention independent of the instrument. The words are clear."

16 (RT 13:2-9)

17 The court also stated its ruling was based on the following:

18 "... the papers submitted has the Los Angeles Superior Court Order. You've referred to Los Angeles
19 and what has taken place there. The Order says, the quote is, the agree terms are clear and
20 unambiguous. The cross-complainant understood, that's your client, understood the terms and signed
21 it. The duties, objections, obligations of agreement are clearly stated. Mutuality and reciprocal duties
22 cannot be read into the unambiguous terms of the agreement. There are no provisions in the
23 agreement prohibiting the cross-defendant from referring to cross-complainant with the press or in
24 legal pleadings or declarations."

25 ¹ Scientology attorney Lawrence Heller, who is the representative of Scientology
26 depicted on the videotape of Armstrong's signing of the agreement, advised one court in 1989 in a
27 motion to quash a deposition subpoena served on Gerald Armstrong (that was based on the
28 agreement) that he "was personally involved in the [1986] settlement" and stated under oath "The
29 non-disclosure obligations were a key part of the settlement agreements insisted upon by all parties
30 involved." (Armstrong's Separate Statement in Opposition to Summary Adjudication on Twentieth
31 Cause of Action at ¶ 101) He further stated, "One of the key ingredients to completing these
32 settlements, insisted upon by all parties involved, was strict confidentiality respecting: (1) the
33 Scientology parishioner or staff member's experiences with the Church of Scientology; (2) any
34 knowledge possessed by the Scientology entities concerning those staff members or parishioners."
35 (*Id.* at ¶ 102) When Heller spoke to Armstrong on November 20, 1989, Heller stated that
36 Scientology had obligations of non-disclosure as well as Armstrong. (*Id.* at ¶ 103)

1 (RT 8:25-9:8) ²

2 Based on the foregoing reasons, in derogation of California law, the court refused to consider attorney
3 Heller's testimony. Such refusal was legally improper.

4 **III. THE COURT MUST CONSIDER THE HELLER DECLARATION**
5 **WHICH RAISES TRIABLE ISSUES AS TO WHETHER THE**
6 **AGREEMENT WAS INTEGRATED AND AS TO THE PARTIES INTENT**
7 **THAT THE GAG PROVISIONS WERE RECIPROCAL**

8 "Under California law, '[t]he test of admissibility of intrinsic evidence to explain the meaning of a
9 written instrument is not whether it appears to the court to be plain and unambiguous on its face, but
10 whether the offered evidence is relevant to prove a meaning to which the language of the contract is
11 reasonably susceptible.' *Thomas Drayage*, 69 Cal.Rptr. at 564, 442 P.2d at 644. Thus, even if a
contract appears to be absolutely clear on its face, the court is required to engage in preliminary
consideration of extrinsic evidence to see whether it creates an ambiguity. However, if the extrinsic
evidence advances an interpretation to which the contract is not reasonably susceptible, the extrinsic
evidence is not admissible. [citation] Further, the mere existence of intrinsic evidence supporting an
alternative meaning does not foreclose summary judgment where the extrinsic evidence is insufficient
to render the contract susceptible to the non-movant's proffered interpretation. [citation]."

12 *Barris Industries, Inc. v. Worldvision Enterprises, Inc.* (9th Cir. 1989) 875 F.2d 1446, 1450 citing *P.G. & E. v.*
13 *G.W. Thomas Drayage* (1968) 69 Cal.2d 33, 39-40; *Aragon-Haas v. Family Security Insurance Services, Inc.*
14 (1991) 231 Cal.App.3d 232, 240; Witkin, California Evidence, Vol. 2, pp 920-923, § 975-977, pp. 929-934,
15 § 983-986.

16 In addition to Heller's sworn representations that the reciprocal intent of the parties was to maintain
17 reciprocal silence, Armstrong relies on Scientology's breaches of its obligation to maintain such silence as to
18 Armstrong as excusing him from having to comply with the same requirement as to it. (Separate Statement ¶
19 105) ³

20 Thus, given the fact that CSI's own attorney has stated that the intent of the parties was to remain
21 mutually silent about one another, a "germ of a potential ... defense" has been raised sufficient to defeat

22 ² Yet another judge who construed the agreement stated, "So my belief is Judge
23 Breckenridge, being a very careful judge ... if he had been presented with that whole agreement and
24 if he had been asked to order its performance, he would have dug his feet in because that is one ...
25 I'll say one of the most ambiguous, one-sided agreements that I have ever read. And I would have
26 not ordered the enforcement of hardly any of the terms if I had been asked to, even on the threat
that okay, the case is not settled. [¶] I know we like to settle cases. But we don't like to settle cases
and, in effect, prostrate the court system into making an order which is not fair or in the public
interest." (*Id.* at ¶ 120)

27 ³ Among other things, after the settlement, Scientology stated that Armstrong was a
28 perjurer, contemnor, and admitted agent provacteur of the United States Government. (Separate
Statement, ¶ 105 (E).

summary adjudication. *Jos. Schlitz Brewing Co. v. Downey Distributor* (1980) 109 Cal.App.3d 908, 917; *Classen v. Weller* (1983) 145 Cal.App.3d 27, 39.

Most importantly, Heller's contradictory statements also implicate important public policy considerations as to the integrity of the judiciary and the lawyers who practice within it. Recently, the Second District Court of Appeal applied principles regarding stipulated reversals of judgment to a civil compromise that affected the right of the state to conduct a criminal prosecution. It stated that "When a court determines that a contract is contrary to public policy, it has a duty to refrain from allowing parties to maintain an action based on that contract. *Bovard v. American Horse Enterprises* (1988) 201 Cal.App.3d 832, 838." *People v. Eisenberg* (November 7, 1995) 95 C.D.O.S. 8643, 8644. As in *Eisenberg*, principles regarding stipulated reversals of judgment to a civil compromise are instructive in this case as well.

The public interest exception to the presumption that requests for stipulated reversal will be granted cannot be defined by formula, though it will be more likely preesent when the judgment in question involves important public rights, unfair, illegal, or corrupt practices, or torts affecting a significant number of persons. Whether a stipulated reversal would deprive the public of an important benefit must in every case be determined "'from a realistic assessment of all the pertinent circumstances.'" [Citation.]" (*California Common Cause v. Duffy* (1987) 200 Cal.App.3d 730, 745

Norman I. Krug Real Estate v. Praszker (1994) 22 Cal.App.4th 1814, 821.

That the public has an interest in the integrity of the judicial system cannot be disputed. *River West, Inc. V. Nickel* (1987) 188 Cal.App.3d 1297, 1306 ["The preservation of public trust both in the scrupulous administration of justice and in the integrity of the bar is paramount ... public's interest in an untainted judicial system."]

The settlement agreement at issue, by itself, "involves important public rights, unfair, illegal, or corrupt practices, or torts affecting a significant number of persons," but more importantly because it is one component of a poly-dimensional effort by Scientology to buy its way out of accountability for the consequences of its conduct driven by its Fair Game Doctrine. Thus, the agreement violates the "first principle that the people have the right to know what is done in their courts." *Church of Scientology v. Armstrong* (1991) 232 Cal.App.3d 1060, 1068.

In the initial litigation between Armstrong and Scientology, Judge Paul G. Breckenridge, Jr., specifically found the Scientology organization to be malevolent, in part because the organization "or its minions is fully capable of intimidation [of witnesses, including Armstrong] or other physical or psychological

1 abuse if it suits their ends." (Armstrong's Separate Statement at ¶ 1 (A), Ex. 1 (A) at 8:3-6. He further provided
2 the following factual findings, inter alia, regarding Scientology:

3 In 1970 a police agency of the French Government conducted an investigation into Scientology and
4 concluded "this sect, under the pretext of 'freeing humans' is nothing in reality but a vast enterprise to
5 extract a maximum amount of money from its adepts by (use of) pseudo-scientific theories, by (use of)
6 'auditions' and 'stage settings' (lit. to create a theatrical scene') pushed to extremes (a machine to
7 detect lies, its own particular phraseology . . .), to estrange adepts from their families and to exercise a
8 kind of blackmail against persons who do not wish to continue with this sect." [footnote omitted]
9 From the evidence presented to this court in 1984, at the very least, similar conclusions can be
10 drawn.

11 In addition to violating and abusing its own members civil rights, the organization over the years with
12 its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives
13 as enemies. The organization is clearly schizophrenic and paranoid, and this bizarre combination
14 seems to be a reflection of its founder LRH [L. Ron Hubbard]. The evidence portrays a man who has
15 been virtually a pathological liar when it comes to his history, background, and achievements. The
16 writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power,
17 and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile.

18 *Id.* at 8:7-9:4. (Emphasis added.)

19 In contrast to his findings regarding Scientology, Judge Breckenridge found Armstrong and his
20 witnesses to be credible and sympathetic. He wrote:

21 As indicated by its factual findings, the court finds the testimony of Gerald and Jocelyn
22 Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and
23 Homer Schomer to be credible, extremely persuasive and the defense of privilege or justification
24 established and corroborated by this evidence . . . In all critical and important matters, their testimony
25 was precise, accurate, and rang true. The picture painted by these former dedicated Scientologists, all
26 of whom were intimately involved [with the highest echelons of power in] the Scientology
27 Organization, is on one hand pathetic, and on the other, outrageous. Each of these persons literally
28 gave years of his or her respective life in support of a man, LRH [L. Ron. Hubbard], and his ideas.
Each has manifested a waste and loss or frustration which is incapable of description.

Id. at 7:9-26. (Emphasis added.)

Since the scope of the settlement agreements' gag provisions specifically included Nancy Dincalcis
(now Nancy Rodes), Kima Douglas, Laurel Sullivan, and Howard Schomer. (Scientology's Exhibit 1 (B)), it
becomes clear that Scientology was seeking to buy its way out of the conclusion that Judge Breckenridge had
rendered with respect to its nature and credibility, and to eliminate such persons from ready availability as
witnesses in future litigation. The nature of the settlement agreement is further clarified by looking at its
requirements that Armstrong forbear from participating in Scientology's appeal of Judge Breckenridge's
opinion (Scientology's Exhibit 1 (A) at ¶ 4-B), assist in its effort to obtain return of documents in *United States*

1 v. *Zolin*,⁴ and in, furtherance of the gag provisions, to avoid service of process. (Scientology's Exhibit 1 (A) at
2 ¶ 7H.)

3 Judge Breckenridge's decision was not an isolated aberration. Scientology has a long history of
4 tortious and criminal behavior.⁵ With this judicial context, it is inconceivable that there is no question of fact

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6 ⁴ *United States v. Zolin*, then Case No. CV 85-0440-HLH (Tx) in the U.S. District Court, Central
7 District of California, which on December 6, 1986 (the date of settlement), was on appeal before the Ninth
8 Circuit. *Armstrong I* was ultimately a subject centrally involved in the Supreme Court opinion reported in
9 *United States v. Zolin* (1989) 109 S.Ct. 2619, 105 L.Ed.2d 469.

10 *Zolin* arose from an investigation of L. Ron Hubbard, founder of the Church of Scientology, by
11 Criminal Investigation Division of the Internal Revenue Service ("CID/IRS"). *Id.* 105 L.Ed.2d at 480. In the
12 course of its investigation, the CID/IRS sought access to 49 documents, including two most important tape
13 recordings, that had been filed under seal in *Armstrong I*. *Id.* 105 L.Ed.2d at 481. Scientology sought to
14 block CID/IRS access to the documents in *Armstrong I* by asserting the attorney-client privilege as a basis for
15 injunctive relief obtained in the United States District Court for the Central District of California. Citing the
16 crime-fraud exception to the privilege, the CID/IRS opposed. The District Court upheld the privilege. On
17 appeal the Ninth Circuit affirmed. *Id.* 105 L.Ed.2d at 481-83. The United States Supreme Court addressed
18 whether the attorney-client privilege between Scientology and some of its attorneys should be abrogated on
19 the basis "that the legal service was sought or obtained in order to enable or aid the client to commit or plan
20 to commit a crime or tort." *Id.* at 105 L.Ed.2d at 489. In *Zolin*, the Supreme Court reversed the Ninth
21 Circuit's ruling, in *United States v. Zolin* (9th Cir. 1987) 809 F.2d 1411, that the Government had not made a
22 sufficient showing that there had been "illegal advice . . . given by [Scientology] attorneys to [Scientology]
23 officials" to invoke the crime-fraud exception to the attorney-client privilege. Upon reversing and remanding,
24 the Supreme Court ordered the Ninth Circuit to review partial transcripts of the tape recordings sought by the
25 IRS in the criminal investigation of Scientology to determine whether the crime-fraud exception to the
26 privilege applied. On remand, the Ninth Circuit held:

27 **The partial transcripts demonstrate that the purpose of the [Mission Corporate Category Sort Out]
28 project was to cover up past criminal wrongdoing. The MCCS project involved the discussion and
planning for future frauds against the IRS, in violation of 18 U.S.C. ¶ 371. [citation.] The figures
involved in MCCS admit on the tapes that they are attempting to confuse and defraud the U.S.
Government. The purpose of the crime-fraud exception is to exclude such transactions from the
protection of the attorney-client privilege.**

29 *United States v. Zolin* (1990) 905 F.2d 1344, 1345 (emphasis added.).

30 Pursuant to Paragraph 7E(c) of the settlement agreement specifically addressing the MCCS tapes in
31 *Zolin*, the Scientology Organization required Armstrong to "assist [the Scientology Organization] in
32 recovering these documents as quickly as possible, including but not limited to these tapes."

33 ⁵ *Allard v. Church of Scientology* (1976) 58 Cal.App.3d 439, 443, fn. 1, 447 [Fair Game means
34 "that person 'may be deprived of property or injured by any means by any Scientologist without discipline of
35 the Scientologist. May be tricked, sued or lied to or destroyed.' ... Evidence of such policy statements were
36 damaging to [the Church of Scientology], but they were entirely relevant. They were not prejudicial. A party
37 whose reprehensible acts are the cause of harm to another and the reason for the lawsuit by the other cannot
38 be heard to complain that its conduct is so bad that it should not be disclosed." Practice of Fair Game
resulted in setting enemy up for criminal conviction.] *Wollersheim v. Church of Scientology of California*
(1989) 212 Cal.App.3d 872, 881-891 [Fair Game was modern-day "Christian inquisition" intended to
"neutralize" adversary by stripping him of economic and psychological resources.]; *United States v. Kattar*
(1st Cir. 1988) 849 F.2d 118, 125-126 [In the late 1970s, the United States successfully prosecuted a number
of high-level Scientologist operatives for various crimes involving illegal break-ins, burglaries and wire taps ...
The Church according to the U.S. Attorney, 'launched vicious smear campaigns against those perceived to be
enemies of Scientology.' The Church's methods for this included subornation of perjury. The memo also

(continued...)

1 on the issue that Scientology's intention as to the settlement agreement at issue was to "buy [its] way out"
2 *People v. Eisenberg* (November 7, 1995) 95 C.D.O.S. 8643, 8644 quoting *Norman I. Krug Real Estate v.*
3 *Praszker* (1994) 22 Cal.App.4th at 1823, of having to be accountable for the consequences of its conduct
4 with respect to those whom it had in the past, and would in the future, victimize pursuant to its Fair Game
5 Doctrine.

6 Under this view, the \$800,000 that Scientology paid to Armstrong to dismiss his cross-complaint and
7 maintain silence is not a barometer of the depth of Armstrong's disregard of his word to stick to the
8 settlement.⁶ It is a barometer of the value which Scientology placed on the suppression of Armstrong's
9 testimony which was "credible, extremely persuasive and ... corroborated by this evidence . . . In all critical
10 and important matters, . . . was precise, accurate, and rang true" regarding a criminal organization.⁷ For this
11 Court to participate in such a corrupt scheme has "dangerous public policy implications" *Ibid.* because the
12 events set forth above "tend to undermine individual security, personal liberty, or private property, or injure
13 the public or the public good." *Church of Scientology v. Armstrong, supra.* 232 Cal.App.3d at 1068. One
14 result is that "public court business is conducted in private [and then] it becomes impossible to expose
15

16 ⁵(...continued)
17 acknowledged the existence of the Fair Game Doctrine as the active animating philosophy of the Church.");
18 *Church of Scientology v. Commissioner* (1984) 83 U.S. Tax Ct. Rpts. 381, 429-442 ["Petitioner [Church of
19 Scientology of California], its agents, and others willfully and knowingly conspired to defraud the United
20 States ... In pursuit of the conspiracy, petitioner filed false tax returns, burglarized IRS offices, stole IRS
documents, and harassed, delayed, and obstructed IRS agents who tried to audit the Church's records.
Petitioner gave false information to and concealed relevant information from the IRS about its corporate
structure ..."]; *United States v. Hubbard* (D.C. 1979) 474 F.Supp. 64, 70-77, 79, 83-84.

21 ⁶ As Armstrong's evidence has illustrated (Separate Statement at ¶¶ 106, 154, 155), he did keep
his word for years until Scientology's betrayal of their promises became completely intolerable.

22 ⁷ The nature of Scientology continues to be judicially recognized as a live public controversy of
23 great importance. In his Memorandum Opinion, United States District Court Senior Judge John L. Kane Jr. in
24 *Religious Technology Center v. F.A.C.T.NET, INC.; Lawrence Wollersheim and Robert Penny*, United States
25 District Court for the District of Colorado, Case No. 95-K-2143, filed October 3, 1995, found that
26 "The alleged copying by the Defendants was not of a commercial nature. Rather, it was for the non-
27 profit purposes to advance understanding of issues concerning the Church which are the subject of
28 on-going public controversy. ... [L] Defendants maintain and the evidence does not refute that the
Lerma postings to the Internet were made in the context of ongoing dialogue in the particular
newsgroup to which they were posted. They form part of the topical debate concerning whether the
Works are of substance or are perpetuated as part of systemic mind control. ... As such, the postings
may well be considered as having been made for the purposes of criticism, comment or research
falling within the fair use doctrine"

Exhibit B, to Greene Decl.)

1 corruption, incompetence, inefficiency, prejudice, and favoritism." *Ibid.*

2 Scientology's litigation practices bring the question of judicial corruption into high relief.

3 On November 14, 1995, in *Church of Scientology International v. Time Warner, Inc.; Time Inc.*
4 *Magazine Company, and Richard Behar*, the United States District Court, Southern District of New York,
5 Case No. 92 Civ. 30324 (PKL) the court granted summary judgment in favor of Time Magazine as to the
6 following statements:

7 In reality the church is a hugely profitable global racket that survives by intimidating members
8 and critics in a Mafia-like manner."

9 "Says Cynthia Kisser, the [Cult Awareness] network's Chicago-based executive director"
10 'Scientology is quite likely the most ruthless, the most classically, terroristic, the most litigious cult the
11 country has ever seen. No cult extracts more money from its members.'

12 "Those who criticise the church – journalists, doctors, lawyers and even judges so often find
13 themselves engulfed in litigation, stalked by private eyes, framed for fictional crimes, beaten up or
14 threatened with death."

15 (Exhibit C to Greene Decl. At pp. 7)

16 In the most stark and blatant terms, this Court has made a judgment call on the facts by regarding
17 Armstrong's veracity and character when it argues or factually concludes that Armstrong has engaged in
18 "double-speak."⁸ The judgment call that the Court has made has the most profound impact which stampedes
19 on constitutional rights upon which the public good, trust and interest is necessarily predicated.

20 IV. THE INJUNCTION VIOLATES THE FIRST AMENDMENT

21 The inappropriateness of the court's injunction is dramatically underscored by what the court has
22 enjoined: Armstrong's exercise of his right as an apostate to criticize his former religion while his former
23 religion not only assails his reputation and character, but also his Christianist religious beliefs. The court's
24 injunction forces Armstrong, upon penalty of imprisonment, to maintain abject silence in the face of a
25 Scientologist attack upon the root's of Armstrong's Christianist beliefs. Such violates two constitutionally

26 ⁸ It upsets Armstrong greatly that the court refers to him in Orwellian terms as having engaged
27 in "double speak." (RT 4:6) Not only is a credibility determination inappropriate on a motion for summary
28 adjudication, *AARTS Productions, Inc. v. Crocker National Bank* (1986) 179 Cal.App.3d 1061, 1064, said
characterization reflects a lack of understanding by the court of the facts. If the contradictory statements of
attorney Heller are considered, there is a "germ of a defense" and a factual issue that Armstrong has not
engaged in "double speak" at all. Rather, Scientology is engaged in a gargantuan effort to perpetrate a
massive fraud on the American Court and the American People. See, discussion of the November 14, 1995
grant of summary judgment on behalf of *Time in Church of Scientology International v. Time Warner, Inc.;*
Time Inc. Magazine Company; and Richard Behar, infra.

1 essential principles.

2 Justice Brandeis best articulated the value of free speech as the necessary predicate and intelligent
3 core of constitutional liberty in his famous concurrence in *Whitney v. California* (1927) 274 U.S. 357, 375:

4 "[The Framers of the Constitution] believed the freedom to think as you will and to speak as you think
5 are means indispensable to the discovery and spread of political truth; that without free speech and
6 assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection
7 against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people;
8 that public discussion is a political duty; and that this should be a fundamental principle of American
9 government. They recognized the risks to which all human institutions are subject. But they knew that
10 order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to
11 discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate;
12 that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely
13 supposed grievances and proposed remedies; that the fitting remedy for evil counsels is good ones.
14 Believing in the power of reason as applied through public discussion, they eschewed silence coerced
15 by law - the argument of force in its worst form."

16 Justice Cardozo referred to freedom of speech as "the matrix, the indispensable condition, of nearly
17 every other form of freedom." *Palko v. Connecticut* (1937) 302 U.S. 319, 327.

18 [The First] Amendment rests on the assumption that the widest possible dissemination of
19 information from diverse and antagonistic sources is essential to the welfare of the public ...
20 *Citizen Publishing Co. v. United States* (1969) 394 U.S. 131, 139-140. The reason for protecting the free
21 flow of information is that "[o]ur system of government requires that we have faith in the ability of the
22 individual to decide wisely, if only he is fully apprised of the merits of a controversy." *Eisenstadt v. Baird*
23 (1972) 405 U.S. 438, 457 (Douglas, J., concurring.)

24 "... above all else, the First Amendment means that government has no power to restrict expression
25 because of its message, its ideas, its subject matter, or its content. [Citation.] To permit the continued
26 building of our politics and culture, and to assure self-fulfillment for each individual, our people are
27 guaranteed the right to express any thought, free from government censorship. The essence of this
28 forbidden censorship is content control. Any restriction on expressive activity because of its content
would completely undercut the 'profound national commitment to the principle that debate on public
issues should be uninhibited, robust and wide-open.' [Citation.]"

29 *Police Department v. Mosley* (1972) 408 U.S. 92, 95-96.

30 The court's injunction violates the public interest, and eviscerates its own ability to fulfill its purpose -
31 the ascertainment of truth. It asserts the Power of Government upon Armstrong to restrain him from
32 participating in discussion of "noxious doctrine," which is "silence coerced by law - the argument of force in
33 its worst form." *Whitney*, 274 U.S. at 375-376.

34 There is a "germ of a defense" that the instant settlement agreement violates the public interest
35 because it allows Scientology to "buy its way out" of accountability for the consequences of acting out its Fair

1 Game Doctrine which can have a devastating impact on "important public rights, unfair, illegal, or corrupt
2 practices, or torts affecting a significant number of persons." Money, even \$800,000, cannot be allowed to
3 buy this. If it is, the true doublespeak will be "Justice." Because Scientology is able to "buy away" the legacy
4 of its evil conduct, and continue to use the judicial system as a tool of the destruction of its enemies, Justice
5 will have become Injustice. Such is the irony and the mistake of the Court's injunction. As a matter of law,
6 this enforcement of this contract, by this organization against Armstrong, or any other person, is wrong and
7 cannot be enforced in the way that this Court is enforcing it.

8 The Court prohibits Armstrong not only from discussing his pre-December 1986 first-hand knowledge
9 of Scientology as a former Scientologist. It prevents him from even partaking in the current raging public
10 controversy on whether Scientology is good or bad, a religion or a cult, a helper or a predator of mankind.
11 He cannot read a newspaper article in the day's paper and discuss the article with another customer while at
12 a coffee house.⁹ He cannot possess the article, or even the published opinion.

13 In addition to the injunction constituting a most egregious prior restraint on pure speech, the nature of
14 the speech which it impacts, is subject to additional First Amendment protection because it is of an
15 independantly religious nature. Armstrong is a Christianist who believes in God and in Jesus and in the Bible.
16 (Separate Statement at ¶ 147, 157, 159)

17 Although Scientology pays lip service to being compatible with Christianist teachings, (Separate
18 Statement at ¶¶ 160-161), it is anti-christian. (*Id.* At ¶ 162.) Having been secretly taught, an initiated
19 Scientologist beleives that "Christ, God and Heaven are false ideas 'implanted' in humans by electronic
20 means to enslave them." (*Id.* At ¶ 163) Scientology secretly teaches its adherents that its "auditing"
21 procedures are the only way to free mankind from "Christian" slavery and the "Creator of Heaven." (*Id.* At ¶
22 164.) Scientology enforces acceptance of its teachings that Christ, God and Heaven are false "implanted"
23 ideas with Scientology's system of "ethics" punishments, its "auditing procedures," and its institutionalized
24 mockery of God and Christ. Any person in Scientology who professed a belief in Christ, or God, or who

25
26 ⁹ For example, if Armstrong is in San Anselmo drinking coffee tomorrow morning and reads
27 about most of Scientology's case against Time Magazine, he cannot turn to his neighbor and "That's a good
28 decision!" without risking contempt and jail of this Court's injunction. Neither could Armstrong use Time
Magazine's May 6, 1991 article as material for discussion with his fellow citizens without running afoul of
"silence coerced by law – the argument of force in its worst form." (A copy of the articule, "Scientology: The
Cult of Greed" is attached to the Greene Decl. As Exhibit D.

1 sought help through prayer, was viewed and handled as a "psychotic." (*Id.* At ¶ 166) As a Christianist,
2 Armstrong believes that this "blasphemes the Holy Spirit, the one unforgiveable sin." (*Id.* At ¶ 167-169.)
3 There are others who share Armstrong's beliefs. (*Id.* at ¶ 169-172.)

4 Speech about religion is speech entitled to the general protections of the First Amendment. This
5 includes descriptions of religious experiences. *Widmar v. Vincent* (1981) 454 U.S. 263, 269, fn. 6.

6 "In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields
7 the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own
8 point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who
9 have been, or are, prominent in church or state, and even to false statement. But the people of this
10 nation have ordained in the light of history, that, in spite of the probability of excesses and abuses,
11 these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of
12 the citizens of a democracy."

13 *Cantwell v. Connecticut* (1940) 310 U.S. 296, 310.

14 Armstrong believes that God has sent him to help the "little people" whom Scientology "persecutes."
15 (Separate Statement at ¶¶ 173-175) "It is a function of speech to free men from the bondage of irrational
16 fears." *Whitney, supra.*, 274 U.S. at 376. Thus, to enforce the Scientologist view while prohibiting any
17 expression of the counterbalancing Christianist view, violates Armstrong's right to freely exercise his religion,
18 even if the sum total of that religion is to register his public dissent to the conduct taken in furtherance of the
19 Fair Game Doctrine.

20 "Those who begin coercive elimination of dissent soon find themselves exterminating dissenters.
21 Compulsory unification of opinion achieves only the unanimity of the graveyard. [¶] It seems trite but
22 necessary to say that the First Amendment to our Constitution was designed to avoid these ends by
23 avoiding these beginnings. There is no mysticism in the American concept of the State or of the
24 nature or origin of its authority. We set up government by consent of the governed, and the Bill of
25 Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be
26 controlled by public opinion, not public opinion by authority.

27 *West Virginia State Board of Education v. Barnette* (1943) 319 U.S. 624, 641.

28 Armstrong's views on Scientology were sufficiently supported by evidence and conceptually powerful
to convince Judge Breckenridge to make the conclusions he did about Scientology. Even if Armstrong's view
were to be relegated to the realm of what is eccentric rather than what is effective, the First Amendment
would still compel protection against the Court's prior restraint of his speech.

We can have intellectual individualism and the rich cultural diversities that we owe to exceptional
minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless
to others or to the State as those we deal with here, the price is not too great. But freedom to differ is
not limited to things that do not matter much. That would be a mere shadow of freedom. The test of
its substance is the right to differ as to things that touch the heart of the existing order.

1 *Id.* At 641-642.

2 Armstrong's position does go to the heart of the existing order because he asserts that no amount of
3 money, not even \$1 million, can buy the truth. He says the First Amendment is not for sale. ¹⁰

4 The Fourteenth Amendment supports Armstrong's position.

5 The test of legislation which collides with the Fourteenth Amendment, because it also collides with
6 the principles of the First, is much more definite than the test when only the Fourteenth is involved.
7 Much of the vagueness of the due process clause disappears when the specific prohibitions of the First
8 become its standard. ... freedoms of speech and of press, of assembly, and of worship may not be
9 infringed on ... slender grounds. They are susceptible of restriction only to prevent grave and
10 immediate danger to interests which the state may lawfully protect.

11 *Id.* 319 U.S. at 639. Armstrong engaging in religious speech regarding Scientology presents no "grave and
12 immediate danger" to the State's interest. The only value which supports the injunction is the right to
13 contract. While not to be belittled, such right is also not ultimate.

14 Just because citizens contracted to purchase homes with the express covenant that said home would
15 never be sold to Africans was insufficient to enforce such racially restrictive covenants. *Shelley v. Kraemer*
16 (1948) 334 U.S. 1. Judicial action is state action and therefore subject to the requirements of the Fourteenth
17 Amendment. *Id.* At 14-18. Just as Black and White people stand equally before the law, so does the
18 Scientologist and the Christianist. The Scientologist cannot use the law to strip the Christianist of his First
19 Amendment Rights without running afoul of the First and Fourteenth Amendments.

20 All of the speech which the court has ordered repressed is religious in nature because the content of
21 such speech is the criticism of the Scientology religion and its leaders by Armstrong. (Separate Statement
22 ¶138-175) Such prior restraint puts Armstrong in the position that while Scientology may lie about Armstrong
23 to the public, if he in response tells the truth about Scientology, Scientology will have this court jail him for
24 contempt of court. It is the greatest irony that Scientology, a tax-exempt organization that is supposed to

25 ¹⁰ The Court's reliance on *ITT Telecom Products Corp. v. Dooley* (1989) 214 Cal.App.3d 307,
26 319 is misplaced. If there had been no agreement between the parties, as testified to by Scientology's
27 attorney Heller, that each side would maintain silence about the other, and Armstrong had voluntarily,
28 knowingly and intelligently agreed that Scientology could say whatever it wanted about him, and that if he
said anything back he could be sued, enjoined and jailed, the agreement perhaps could be enforced if
Armstrong was competent to enter into such an agreement. Since there is competent evidence from attorney
Heller, for the purposes of summary judgment the Court cannot conclude that there is no triable issue
whether or not Armstrong's purported waiver of his First Amendment rights was constitutional. Since,
however, there is such a triable issue, summary judgment, particularly on an equitable cause of action for a
permanent injunction silencing Armstrong is notably without adequate legal basis.

1 benefit the public, has obtained a court order to silence the words of a former member who warns the public
2 of the danger it presents. Such would be a denial of equal protection of the law, not to mention a violation of
3 the First Amendment's establishment clause.

4 In order to pass muster under the First Amendment's establishment clause, the governmental action
5 must pass a three-pronged test.

6 "First the [governmental order] must have a secular legislative purpose; second, its principal or
7 primary effect must be one that neither advances nor inhibits religion ...; finally the [order] must not
foster an excessive governmental entanglement with religion."

8 *Lemon v. Kurtzman* (1971) 403 U.S. 602, 612-613. Failure of state action to satisfy any one of the criteria
9 requires invalidation. *Edwards v. Aguillard* (1987) 482 U.S. 578, 583. "[G]overnment cannot exert its
10 authority in the domain of religious conviction. Government may not convey any message of 'endorsement
11 or disapproval' of religious activity, or use its 'power [or] prestige ... to control, support or influence' any
12 matter of religious faith." *United Christian Scientists v. First Church of Christ* (1987) 829 F.2d 1152, 1161-
13 1162.

14 The injunction fails the last two prongs of this test. The order advances Scientology's religious
15 purpose while it inhibits Armstrong's. It furthers Scientology's Fair Game Doctrine, allowing it to lie about
16 Armstrong, and inhibits Armstrong's dedication to the truth by silencing him in the face of such lies. The
17 order allows Scientology to propagate its belief that God and Jesus are "plants" to enslave man, while at the
18 same time it censors Armstrong's belief that such is blasphemy.

19 Finally, the order constitutes an excessive entanglement because if Armstrong's conscience cannot
20 allow him to remain silent in the face of such lies, this court in the enforcement of its order will have to jail
21 him for the act of standing up and speaking his convictions, whether the court considers him to be mad or
22 not. It is inconceivable that in our democratic society the Government will enforce a religious edict by
23 jailing a citizen who dares to speak out against it.

24 **V. THE INJUNCTION PREVENTS ARMSTRONG**
25 **FROM DEFENDING HIMSELF IN OTHER LITIGATION WITH CSI.**

26 On October 10, 1995, in *In re Gerald Armstrong*, U.S. Bankruptcy Court for the Northern District of
27 California, No. 95-10911, and *Church of Scientology International v. Gerald Armstrong*,
28 U.S. Bankruptcy Court for the Northern District of California, A.P. 95-1164, the Court ordered "all direct

1 testimony at trial shall be in the form of declarations." (Exhibit E [Court's Order filed October 10, 1995] to
2 Greene Decl.) The subject matter of that proceeding is the same as in the instant proceeding (Exhibit F & G
3 [Armstrong's Answer and Order filed October 10, 1995 denying Scientology's motion to strike said Answer]
4 to Greene Decl.) Thus, the instant injunction precludes Armstrong from representing himself in that litigation
5 because he cannot talk to people about Scientology in order to obtain declarations in his own defense.¹¹
6 Such is a denial of Armstrong's First Amendment right to redress, Fifth and Fourteenth Amendment rights to
7 due process and to a fair trial, and his Sixth Amendment rights to counsel and to confrontation.

8 **V. THE SEALING ORDER IS UNINTELLIGIBLE AND UNENFORCEABLE**

9 In an act of supreme irony, the court ordered all publicly filed documents in this case possessed by
10 Mr. Greene, Armstrong's counsel "not be distributed to third parties." The public file in this case has been
11 open for public review for almost 4 years as it should be. In Armstrong's own prior litigation, the Court of
12 Appeal held

13 "there can be no doubt that court records are public records, available to the public in
14 general ... unless a specific exception makes specific records non public. [Citation.] To
15 prevent secrecy in public affairs public policy makes public records and documents
16 available for public inspection by ... members of the general public ... [Citations.]
17 Statutory exceptions exist [citations], as do judicially created exceptions, generally
18 temporary in nature, exemplified by such cases as Craemer, supra, and Rosato v.
19 Superior Court (1975) 51 Cal.App.3d 190 ..., which involved temporary sealing of
20 grand jury transcripts during criminal trials to protect defendant's right to a fair trial free
21 from adverse advance publicity. Clearly, a court has inherent power to control its own
22 records to protect rights of litigants before it, but, 'where there is no contrary statute or
23 countervailing public policy, the right to inspect public records must be freely
24 allowed. ... [¶] If public court business is conducted in private, it becomes impossible
25 to expose corruption, incompetence, inefficiency, prejudice and favoritism. For this
26 reason traditional Anglo-American jurisprudence distrusts secrecy in judicial
27 proceedings and favors a policy of maximum access to proceedings and records of
28 judicial tribunals. Thus, in Sheppard v. Maxwell (1966) 384 U.S. 333, 350, the court
said it is a vital function of the press to subject the judicial process to 'extensive public
scrutiny and criticism.' And the California Supreme Court has said, 'it is a first
principle that the people have the right to know what is done in their courts.' (In re
Shortridge (1893) 99 Cal. 526, 530) Absent strong countervailing reasons, the public
has a legitimate interest and right of general access to court records"

24 *Church of Scientology v. Armstrong* (1991) 232 Cal.App.3d 1060, 1068.

25 There is simply no basis for this Court to order Armstrong's counsel to become subject to Armstrong's
26 agreement. Indeed, since the order is the judicial enforcement of an agreement, said order violates Rule of

27 ¹¹ The allegations set forth in Armstrong's Answer stand, Scientology's motion to strike having
28 been denied on October 6, 1995. (Exhibit G to Greene Decl.)

1 Professional Responsibility 1-500. ¹² He has written all the legal arguments in this case. He has represented
2 numerous other former Scientologists from whom he has obtained many Scientology materials and in the
3 course of whose representation he has obtained copies of all documents filed in the instant litigation.

4 **VI. TO THE EXTENT THAT THE AGREEMENT IS IN RESTRAINT OF TRADE, IT IS INVALID.**

5 The enforcement of the agreement prevents Armstrong from working as a paralegal for Ford Greene.
6 Such is an unreasonable restraint of trade.

7 Business and Professions Code section 16600 provides that, subject to exceptions contained in its
8 chapter, "every contract by which anyone is restrained from engaging in a lawful profession, trade, or
9 business of any kind to that extent is void." The Restatement 2d, Contracts § 186 states: "(1) A promise is
10 unenforceable on grounds of public policy if it is unreasonably in restraint of trade. (2) A promise is in
11 restraint of trade if its performance would limit competition in any business or restrict the promisor in the
exercise of a gainful occupation."

12 Although covenants not to compete may be enforceable if for a limited time period, such a covenant
13 in perpetuity is not enforceable. Thus, the lifetime prohibition of Armstrong working as a paralegal is void. ¹³

14 **VII. THE HELLER AND LONG DECLARATIONS RAISE TRIABLE
ISSUES REGARDING THE DEFENSE OF UNCLEAN HANDS**

15 Assuming without conceding that as a matter of contractual interpretation CSI was not required to
16 maintain silence as to Armstrong, its actions are such as to create a triable issue regarding the defense of
17 unclean hands. (Separate Statement at ¶ 105, 130) Traditionally, the doctrine of unclean hands is invoked
18 when one seeking relief in equity has violated conscience, good faith or other equitable principles in his prior
19 conduct. Accordingly, one who violates his contract cannot have recourse to equity to support that violation.
20 *Fibreboard Paper Prod. Corp. v. East Bay Union* (1964) 227 Cal.App.2d 675, 727. It is a proper defense in a
21 legal action as well as in equity *Id.* at 728.

23
24 ¹² Rule 1-500 (A) states: "A member shall not be a party to or participate in offering or
25 making an agreement, whether in connection with the settlement of a lawsuit or otherwise, if the
agreement restricts the right of the member to practice law"

26 ¹³ The preliminary injunction in this case allowed for Armstrong to perform routine clerical tasks
27 for Greene, even on Scientology cases, provided that the same did not involve the communication of
28 knowledge that Armstrong obtained in Scientology. Scientology's order to show cause re contempt against
Armstrong for answering the telephone, relaying messages and executing proofs of service in Scientology
litigation handled by Greene did not violate the preliminary injunction. (Armstrong's Separate Statement at
¶¶ 23, 37, Exhibits 1 (J)(L).)

Any unconscientious conduct in the transaction may give rise to the defense. [Citations.] This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitable conduct, 'for it is not only fraud or illegality which will prevent a suitor from obtaining equitable relief. Any unconscientious conduct upon his part which is connected with the controversy will repel him from the forum whose very foundation is good conscience."

Burton v. Sosinsky (1988) 203 Cal.App.3d 562, 573-574.

The equitable principles underlying the clean hands doctrine do not require a finding that Pond was guilty of perjury, concealment or other illegal conduct, 'for it is not only fraud or illegality which will prevent a suitor from obtaining equitable relief. Any unconscientious conduct upon his part which is connected with the controversy will repel him from the forum whose very foundation is good conscience.

Pond v. Insurance Co. of America (1984) 151 Cal.App.3d 280, 291. The application of the doctrine is primarily a question of fact. *Fibreboard*, 227 Cal.App.2d at 726-727. The defense applies only if the inequitable conduct occurred in a transaction directly related to the matter before the court and affects the equitable relationship between the litigants. *California Satellite Systems, Inc. v. Nichols* (1985) 170 Cal.App.3d 66, 70. The unconscionable conduct must be of such a nature that it would, if permitted to go unnoticed, result in prejudice to the other party. *Soon v. Beckman* (1965) 234 Cal.App.2d 33, 36.

Based on Heller's statements as to the intention of the parties on one hand (Separate Statement ¶ 101, 102), and Scientology's post settlement references to and characterizations of Armstrong as a liar, agent provocateur, and contemnor on the other (*Id.* at ¶105), it is clear that Armstrong has raised a factual issue as to his defense of unclean hands. Scientology cannot state out of one side of its mouth that the keep quiet provisions were mutual and state out of the other side of its mouth the ways in which it says Armstrong is a bad man.

VIII. CONCLUSION

Based on the foregoing points and authorities, defendant Armstrong respectfully submits that his motion for reconsideration should be granted.

DATED: November 16, 1995

HUB LAW OFFICES

By: 

FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

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DECLARATION OF FORD GREENE

I, FORD GREENE, declare:

1. I am an attorney licensed to practice law in the courts of the Sate of California and am the attorney of record for Gerald Armstrong, defendant herein.

2. I personally participated in a hearing before the Department 1 of the above Court on Scientology's3. motion for summary adjudication on its 20th cause of action for a permanent injunction on October 6, 1995. During that hearing I was cut off by the court and prevented from making the appellate record necessary for the proper representation of defendant. A true and correct copy of the transcript of said hearing is attached hereto as Exhibit A.

3. I represent Lawrence Wollersheim in *Wollersheim v. Church of Scientology of California*, Los Angeles County Superior Court, Case No. C 332 027. Mr. Wollersheim is a defendant in an action entitled *Religious Technology Center v. F.A.C.T.NET, INC.*; *Lawrence Wollersheim and Robert Penny*, United States District Court for the District of Colorado, Case No. 95-K-2143. A true and correct copy of the Memorandum Opinion of the Court, filed therein October 3, 1995, is attached hereto as Exhibit B.

4. I represent Uwe Geertz who was a defendant in a defamation action that Scientology dismissed on the eve of trial in the Central District of California in *Church of Scientology International v. Fishman*, No. CV 91-6426 HLH (Tx) C.D. Cal which litigation arose out of certain statements attributed to Dr. Geertz in the Time Magaize article entitled "Scientology: The Cult of Greed" published May 6, 1991. A true and correct copy of the Opinion and Order filed on November 14, 1995, in *Church of Scientology International v. Time Warner, Inc; Time Inc. Magazine Company; and Richard Behar*, United States District Court, Southern District of New York is attached hereto as Exhibit C.

5. A true and correct copy of the Time Magaize article entitled "Scientology: The Cult of Greed" published May 6, 1991 in attached hereto as Exhibit D.

6. In *In re Gerald Armstrong*, U.S. Bankruptcy Court for the Northern District of California, No. 95-10917, and *Church of Scientology International v. Gerald Armstrong*, U.S. Bankruptcy Court for the Northern District of California, A.P. 95-1164 an order filed October 10, 1995, issued from the U.S. Bankruptcy court in litigation between the same parties herein. A true and correct copy of said order is

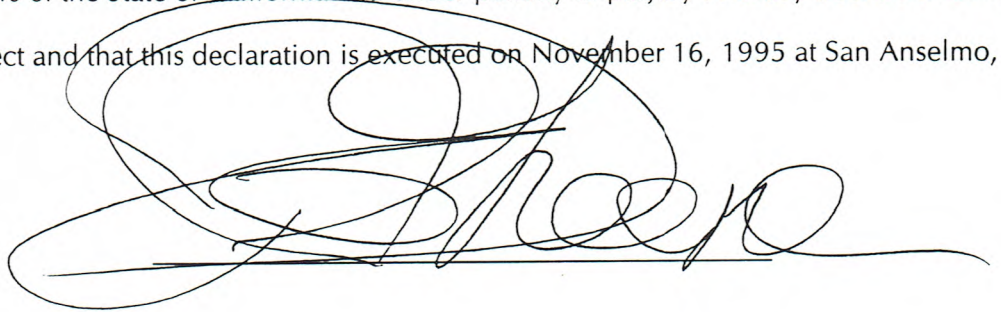
1 attached hereto as Exhibit E. Attached hereto as Exhibit F is a true and correct copy of Armstrong's answer in
2 said litigation. Attached hereto as Exhibit G is a true correct copy of the Court's order filed October 6, 1995
3 in said litigation denying Scientology's motion to strike said Answer.

4 6. On October 17, 1995, this Court's permanent injunction was filed herein and notice thereof
5 was served by mail on October 18, 1995.

6 3. The instant motion is brought because the Court cut me off and prevent me from making the
7 record required for appeal and because I believe that this Court's order is, in fact, erroneous. In addition,
8 further facts and law affecting the court's holding has developed after the hearing on October 6, 1995.

9
10 Pursuant to the laws of the State of California and under penalty of perjury I hereby declare that the
11 foregoing is true and correct and that this declaration is executed on November 16, 1995 at San Anselmo,
12 California.

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A large, stylized handwritten signature in black ink, appearing to read 'D. H. [unclear]', is written over the signature line and extends upwards into the text area.

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3 **PROOF OF SERVICE**

4 I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not
5 a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo,
6 California. I served the following documents:

7 ARMSTRONG'S AMENDED MOTION OF MOTION AND MOTION FOR RECONSIDERATION OF GRANT
8 OF SUMMARY JUDGMENT AS TO TWENTIETH CAUSE OF ACTION FOR PERMANENT INJUNCTION;
9 POINTS AND AUTHORITIES; DECLARATION OF FORD GREENE

10 on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope
11 with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

12 Andrew Wilson, Esquire
13 WILSON, RYAN & CAMPILONGO
14 235 Montgomery Street, Suite 450
San Francisco, California 94104

BY PERSONAL SERVICE

15 LAURIE J. BARTILSON, ESQ.
16 Bowles & Moxon
17 6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028

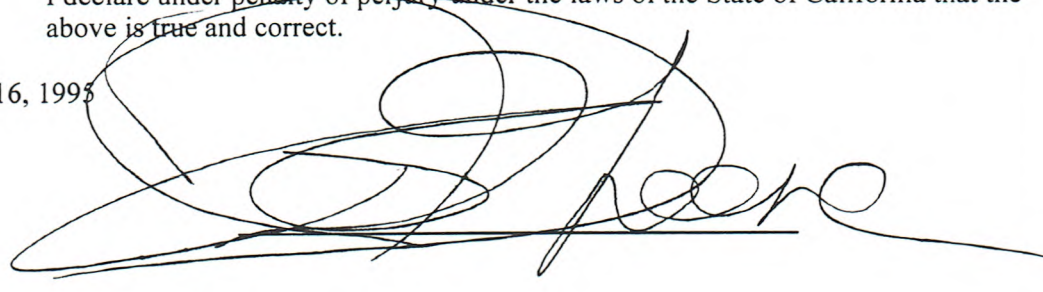
BY FAX

18 [X] (Personal Service) I caused such envelope to be delivered by hand to the offices of the
addressee.

19 [X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the
20 United States Mail at San Anselmo, California.

21 [X] (State) I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

22 DATED: November 16, 1995



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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

BEFORE THE HONORABLE GARY W. THOMAS

--000--

CHURCH OF SCIENTOLOGY
INTERNATIONAL,

PLAINTIFF,

VS.

GERALD ARMSTRONG, ET AL.,

DEFENDANTS.

NO. 157680

REPORTER'S TRANSCRIPT OF THE PROCEEDINGS

FRIDAY, OCTOBER 6, 1995

APPEARANCES:

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SAN ANSELMO, CA 94960

REPORTED BY:
ELAINE PASSARIS, C.S.R.
CERTIFICATE NO. 2948

--000--

1 FRIDAY, OCTOBER 6, 1995

MORNING SESSION

2

3 P R O C E E D I N G S

4 --OOO--

5 THE COURT: WE DO HAVE THE CHURCH OF SCIENTOLOGY
6 VERSUS GERALD ARMSTRONG.

7 MR. WILSON: GOOD MORNING, YOUR HONOR. ANDREW
8 WILSON AND LAURIE BARTILSON ON BEHALF OF PLAINTIFF AND
9 MOVING PARTY, THE CHURCH OF SCIENTOLOGY.

10 MR. GREENE: AND FORD GREENE ON BEHALF OF
11 DEFENDANT, GERALD ARMSTRONG. IT WAS AT MY REQUEST THAT THIS
12 HEARING IS BEING HELD.

13 THE COURT: YES. MR. GREENE, WHAT DO YOU HAVE TO
14 SAY?

15 MR. GREENE: FIRST, YOUR HONOR, WITH RESPECT TO
16 YOUR TENTATIVE RULING, I WANT TO DIRECT MY ARGUMENT TO YOUR
17 HOLDING THAT THE FACTS SUBMITTED BY ARMSTRONG DO NOT
18 ESTABLISH A MUTUAL CONFIDENTIALITY REQUIREMENT.

19 THE INTERPRETATION OF THE COURT OF THE SETTLEMENT
20 AGREEMENT AS REFLECTED BY THE TENTATIVE RULING WOULD HAVE
21 THE RESULT THAT SCIENTOLOGY COULD PUBLICLY ACCUSE
22 MR. ARMSTRONG OF BEING A LIAR, A PERJUROR AND AN AGENT
23 PROVOCATEUR OF THE FEDERAL GOVERNMENT, AND THAT IF ARMSTRONG
24 TOOK ANY ACTION IN RESPONSE THAT THE RESULT WOULD BE THAT HE
25 WOULD VIOLATE THE PROPOSED PERMANENT INJUNCTION AND WOULD BE
26 SUBJECT TO BEING JAILED FOR CONTEMPT OF A COURT ORDER.

27 WHAT THE COURT HAS MISSED IN THE TENTATIVE RULING
28 IS THE EVIDENCE THAT ARMSTRONG HAS SUBMITTED FROM

1 SCIENTOLOGY'S OWN COUNSEL, LAWRENCE HELLER, WHO THE COURT
2 WILL RECALL WAS THE LAWYER WHO WAS PRESENT AT THE SIGNING OF
3 THE SETTLEMENT AGREEMENT, AND HELLER'S OWN SWORN TESTIMONY
4 AS SET FORTH IN SEPARATE FACTS 101 AND 102, WHICH THE COURT
5 DID NOT ADDRESS AND DID NOT INCLUDE IN THE TENTATIVE RULING,
6 STATES THAT THE CONFIDENTIALITY PROVISIONS WERE MUTUAL, THAT
7 THEY WERE INSISTED UPON BY ALL PARTIES, AND THAT THEY
8 PERTAINED NOT ONLY TO ANY INFORMATION THAT THE FORMER
9 SCIENTOLOGY OFFICIAL POSSESSED WITH RESPECT TO THAT
10 ORGANIZATION, BUT IT ALSO PERTAINED -- THE CONFIDENTIALITY
11 PROVISION PERTAINED WITH RESPECT TO INFORMATION HELD BY
12 SCIENTOLOGY AS TO ITS FORMER PARISHIONER OR FORMER OFFICIAL.

13 THAT SINGLE PIECE OF EVIDENCE IS SUFFICIENT UNDER
14 THE CIRCUMSTANCES AND WITH RESPECT TO A 437(C) MOTION TO
15 RAISE A TRIABLE ISSUE OF FACT.

16 WHAT THE COURT HAS DONE BASED ON THE TENTATIVE
17 RULING HAS BEEN SOLELY TO BASE ITS ANALYSIS ON THE FOUR
18 CORNERS OF THE DOCUMENT AND HAS NOT LOOKED AT ALL TO WHAT
19 THE CIRCUMSTANCES WERE WHICH SURROUNDED THE PARTIES ENTERING
20 INTO THE AGREEMENT, AND ALSO HAS NOT LOOKED AT THE CONDUCT
21 OF THE PARTIES SUBSEQUENT TO THE AGREEMENT, AND THE
22 AUTHORITY WITH RESPECT TO SUBSEQUENT CONDUCT IS -- THAT IS
23 AUTOMOBILE SALES VERSUS EAST BAY MOTOR CAR DEALERS, 10
24 CAL.APP.3RD 419.

25 BASICALLY WHAT THAT TALKS ABOUT IS EVEN IF THE
26 LANGUAGE IN A PARTICULAR AGREEMENT APPEARS ON ITS FACE
27 CLEAR, WHICH WE --

28 THE COURT: NOW, MR. GREENE, THE STATEMENT BY

1 ARMSTRONG IN HIS DECLARATION, FACT ONE-H, SAYING MY CAREFUL
2 WEIGHING OF MY OPTIONS, THIS IS HIS WORDS, IN FACT REFLECTS
3 THE DURESS I WAS UNDER TO SIGN AND IS NOT REFLECTIVE OF AN
4 ABSENCE OF DURESS --

5 MR. GREENE: THAT'S A DIFFERENT ARGUMENT.

6 THE COURT: -- DOUBLE SPEAK --

7 MR. GREENE: THAT'S A DIFFERENT ARGUMENT. I'M
8 NOT ADDRESSING MYSELF TO THE DURESS ARGUMENT. I'M NOT
9 ADDRESSING MYSELF TO THE ARGUMENT OF ALL OF THE KINDS OF
10 CONDUCT THAT ARMSTRONG --

11 THE COURT: CAREFUL WEIGHING OF OPTIONS --

12 MR. GREENE: I UNDERSTAND.

13 THE COURT: -- IS TO BE INCONSISTENT WITH THE
14 ABSENCE OF THE FREE EXERCISE OF WILL.

15 MR. GREENE: THAT'S NOT MY ARGUMENT. I'M TALKING
16 ABOUT THE MUTUALITY, BECAUSE IF THE AGREEMENT ACCORDING TO
17 ATTORNEY HELLER, WHO STATED UNDER PENALTY OF PERJURY
18 REPRESENTING CSI WHO'S THE PARTY HERE IN A MOTION TO QUASH
19 ARMSTRONG'S DEPOSITION TESTIMONY IN ANOTHER CASE BEFORE THIS
20 LAWSUIT WAS EVER FILED, BEFORE THERE WAS ANY DISPUTE ABOUT
21 THE SETTLEMENT AGREEMENT, HELLER SAYS THIS WAS MUTUAL, BOTH
22 PARTIES SOUGHT IT.

23 BOTH PARTIES WERE TO MAINTAIN SILENCE AND NOT SAY
24 A DOGGONE THING ABOUT ONE ANOTHER, AND THAT SPECIFIC
25 EVIDENCE IS FOUND AT ARMSTRONG'S EVIDENCE ONE-AD. THAT'S A
26 DECLARATION FROM THE VERY LAWYER WHO WAS PRESENT AT THE
27 SIGNING OF THE SETTLEMENT AGREEMENT AND WHO ALSO SAYS I WAS
28 PERSONALLY INVOLVED IN THE NEGOTIATIONS WHICH RESULTED IN

1 THIS SETTLEMENT AGREEMENT.

2 SO I'M NOT TALKING ABOUT DURESS. I'M NOT TALKING
3 ABOUT FRAUD YET. I'M TALKING ABOUT MUTUALITY, AND THAT I'M
4 TALKING ABOUT THE GOOSE AND GANDER RULE AND THAT WHAT WAS
5 GOOD FOR --

6 THE COURT: THERE'S NO SUCH RULE NOW.

7 MR. GREENE: WELL, THAT'S WHAT YOUR TENTATIVE
8 RULING --

9 THE COURT: THAT'S --

10 MR. GREENE: -- CLEARLY INDICATES.

11 THE COURT: -- OTHER PERSONS NOW.

12 MR. GREENE: JUDGE, YOU DO A VERY GOOD JOB OF
13 ALMOST DERAILING ME.

14 THE POINT IS THAT THE COURT DIDN'T LOOK AND
15 DIDN'T INCORPORATE THOSE FACTS AND THOSE FACTS ARE NOT
16 DISPUTED. THAT'S NUMBER ONE. ACCORDING TO THE CASE LAW
17 THAT THE SUBSEQUENT CONDUCT OF THE PARTIES TO AN AGREEMENT
18 IS VERY RELIABLE EVIDENCE OF WHAT THEIR INTENTIONS WERE IN
19 ENTERING INTO THE AGREEMENT, AND THAT'S WHAT THE COURT HAS
20 TO DO FIRST IS TO ASCERTAIN WHAT WAS THE INTENTIONS OF THE
21 PARTIES, AND IN ORDER TO DO THAT THE COURT'S GOT TO PUT
22 ITSELF IN THE SHOES OF THE PARTIES AT THE TIME THE AGREEMENT
23 WAS ENTERED INTO, AND THAT LEADS ME TO THE SECOND SUPPORTING
24 ARGUMENT WITH RESPECT TO THE RECIPROCAL NATURE OF THE KEEP
25 QUIET PROVISIONS, AND THAT'S BASED ON CIVIL CODE SECTION
26 1647.

27 THE COURT: WELL, IS THERE SOMETHING IN THE
28 CONTRACT THAT'S SO DIFFICULT TO EXPLAIN THAT HAS TO BE

1 EXPLAINED BY ACTIONS?

2 MR. GREENE: YES.

3 THE COURT: WHAT IS IT?

4 MR. GREENE: THERE IS.

5 THE COURT: BASICALLY KEEP YOUR MOUTH SHUT. WE
6 GAVE YOU \$800,000 DOLLARS.

7 MR. GREENE: AH, BUT SEE, THAT'S -- I KNOW THAT,
8 JUDGE, AND THAT'S BEEN THE STICKING POINT IN MY PERCEPTION
9 OF YOUR VIEW OF ARMSTRONG AND THIS CASE ALL THE WAY ALONG.
10 HE GOT \$800,000 BUCKS SO HE DOGGONE WILL -- BETTER KEEP HIS
11 MOUTH SHUT.

12 THE COURT: AND IT'S IN THE AGREEMENT. IF YOU
13 OPEN YOUR MOUTH, YOU HAVE TO PAY BACK \$50,000 EVERY TIME.

14 MR. GREENE: BUT -- WELL, THAT'S -- YET THE
15 LIQUIDATED DAMAGES --

16 THE COURT: HE OPENED HIS MOUTH AND NOW THEY WANT
17 \$50,000 PER EACH TIME.

18 MR. GREENE: JUDGE --

19 THE COURT: THAT'S THE SUBJECT OF ACTS OF THE
20 CHURCH.

21 MR. GREENE: JUDGE, THE ADDITIONAL -- WHAT THE
22 COURT DIDN'T DO AND THE AUTHORITY IS PG&E VERSUS G.W. THOMAS
23 GRANGE --

24 THE COURT: YES, NO RELATION TO ME, ALTHOUGH I
25 LIKED SEEING THAT IN THE STREETS OF SAN FRANCISCO YEARS AGO.

26 MR. GREENE: -- 69 CAL.2D, 33, DISCUSSES --

27 THE COURT: I ASKED MY FATHER, AND HE ADVISED ME
28 I WASN'T NAMED AFTER HIM EITHER.

1 MR. GREENE: -- DISCUSSES THAT THE COURT NEEDS TO
2 LOOK AT THE OBJECT NATURE AND SUBJECT MATTER OF THE CONTRACT
3 SO THAT IT CAN PLACE ITSELF IN THE POSITION OF THE PARTIES.
4 AND WHAT IS BEFORE THE COURT IS THAT AS OF DECEMBER 6TH,
5 1986, ARMSTRONG HAD BEEN JUDICIALLY CREDITED BY JUDGE
6 BRECKENRIDGE (SIC) AS BEING TRUTHFUL AND AS BEING ACCURATE.

7 SCIENTOLOGY IN THE SAME DECISION HAD BEEN
8 JUDICIALLY FOUND TO BE FULLY CAPABLE OF INTIMIDATION OR
9 OTHER PHYSICAL OR PSYCHOLOGICAL ABUSE IF IT SOUGHT -- IF IT
10 LED TO THE ENDS THAT THEY SOUGHT. JUDGE BRECKENRIDGE (SIC)
11 ALSO --

12 THE COURT: NOW, THE OTHER SIDE SAYS IN ESSENCE
13 IF ONE ACCEPTS YOUR ARGUMENT, ONE IS FACED WITH THE
14 UNESCAPABLE CONCLUSION, YOUR CLIENT, HE MADE A PROMISE
15 WITHOUT THE INTENTION OF PERFORMING IT.

16 MR. GREENE: SEE, THE PROBLEM IS, JUDGE, THAT
17 ARMSTRONG --

18 THE COURT: THEY DID PERFORM, THE OTHER SIDE,
19 BECAUSE THEY GAVE THE \$800,000.

20 MR. GREENE: THE PROBLEM WITH THAT ARGUMENT AND
21 THAT VIEW IS THAT IT OCCLUDES ANY REFERENCE TO THE FACT THAT
22 ARMSTRONG AT THE TIME OF THIS SETTLEMENT AGREEMENT HAD A
23 PENDING CROSS-COMPLAINT AND THAT CROSS-COMPLAINT INCLUDED
24 BEING RUN OVER BY A CAR DRIVEN BY AGENTS OF SCIENTOLOGY,
25 INVOLVED IN FREEWAY ACCIDENTS IN VEHICLES DRIVEN BY
26 SCIENTOLOGY, SURVEILED, SPIED ON, AND HARASSED. IN LESS
27 THAN FIVE MONTHS PRIOR TO THE POINT THAT THIS CASE -- THAT
28 THE SETTLEMENT AGREEMENT WAS ENTERED INTO AND ARMSTRONG

1 AGREED TO DISMISS HIS CROSS-COMPLAINT THAT WAS BASED ON
2 CONDUCT OF THAT SORT, AN L.A. COUNTY JURY HAD AWARDED \$30
3 MILLION DOLLARS ON BEHALF OF LARRY WASHORN (SIC) ON BEHALF
4 OF SCIENTOLOGY.

5 IT'S NOT THAT ARMSTRONG WAS PAID \$800,000 DOLLARS
6 IN ORDER TO KEEP HIS MOUTH SHUT. HE WAS PAID \$800,000
7 DOLLARS TO DISMISS HIS CROSS-COMPLAINT, AND IT WAS
8 RECIPROCALLY AGREED BETWEEN SCIENTOLOGY AND ARMSTRONG THAT
9 BOTH OF THEM WOULD KEEP THEIR MOUTHS SHUT, AND WHEN
10 SCIENTOLOGY DIDN'T, WHEN SCIENTOLOGY WAS OUT IN PUBLIC AND
11 IN COURT STAYING ARMSTRONG'S A LIAR, ARMSTRONG'S A PERJUROR,
12 ARMSTRONG'S A PROVOCATEUR, WAS INVOLVED IN SOME GOVERNMENTAL
13 CONSPIRACY TO TRY TO TAKE OVER THE CHURCH OF SCIENTOLOGY,
14 THEN AT THAT POINT, THE REQUIREMENT FOR HIM TO CONTINUE TO
15 ADHERE TO THE SILENCE PROVISIONS AS THEY PERTAINED TO HIM NO
16 LONGER EXISTED.

17 SO IT'S NOT NEARLY SO SIMPLE THAT GERALD
18 ARMSTRONG WAS JUST SORT OF OUT IN LIFE AND ACCEPTED ALMOST A
19 MILLION DOLLARS TO KEEP HIS MOUTH SHUT. HE ACCEPTED -- AND
20 YOU LOOK ALSO, JUDGE, AT SCIENTOLOGY'S OWN EVIDENCE WHICH IS
21 THEIR OWN EVIDENCE AT EXHIBIT ONE-C AT PAGES FOUR AND FIVE,
22 AND THAT WAS THE VALUATION OF ALL OF MICHAEL FLYNN'S
23 CLIENTS, SOME TWENTY CLIENTS THAT WERE ENGAGED IN THIS
24 GLOBAL SETTLEMENT ALL OF WHICH --

25 THE COURT: NOW, MR. GREENE, OF COURSE, THE
26 PAPERS SUBMITTED HAS THE LOS ANGELES SUPERIOR COURT ORDER.
27 YOU'VE REFERRED TO LOS ANGELES AND WHAT'S TAKEN PLACE THERE.
28 THE ORDER SAYS, THE QUOTE IS, THE AGREEMENT TERMS ARE CLEAR

1 AND UNAMBIGUOUS. THE CROSS-COMPLAINANT UNDERSTOOD, THAT'S
2 YOUR CLIENT, UNDERSTOOD THE TERMS AND SIGNED IT. THE
3 DUTIES, OBJECTIONS, OBLIGATIONS OF AGREEMENT ARE CLEARLY
4 STATED. MUTUALITY AND RECIPROCAL DUTIES CANNOT BE READ INTO
5 THE UNAMBIGUOUS TERMS OF THE AGREEMENT. THERE ARE NO
6 PROVISIONS IN THE AGREEMENT PROHIBITING THE CROSS-DEFENDANT
7 FROM REFERRING TO CROSS-COMPLAINANT WITH THE PRESS OR IN
8 LEGAL PLEADINGS OR DECLARATIONS.

9 MR. GREENE: WELL, JUDGE, IT'S NOT REALLY FAIR
10 FOR TO YOU RELY ON THAT, BECAUSE A GRANT OF A MOTION FOR
11 PRELIMINARY INJUNCTION --

12 THE COURT: WELL, NOW, I AGREE THAT THE RULING IS
13 NOT THE LAW OF THE CASE.

14 MR. GREENE: OKAY. YOU ALSO HAVE ANOTHER JUDGE
15 FROM THE SAME COURT SAYING THAT THIS IS THE MOST AMBIGUOUS
16 ONE-SIDED UNFAIR AGREEMENT HE'D EVER SEEN, AND IF IT HAD
17 BEEN SUBMITTED TO HIM HE WOULDN'T HAVE -- OR TO JUDGE
18 BRECKENRIDGE (SIC) THE ORIGINAL JUDGE WHO PRESIDED OVER THE
19 TRIAL WHERE SCIENTOLOGY ORIGINALLY SUED ARMSTRONG, HE
20 WOULDN'T HAVE ENFORCED ANY OF IT.

21 SO WE CERTAINLY HAVE ACCURACIES IN THE EYE OF THE
22 BEHOLDER, AND JUST BECAUSE ONE JUDGE SAYS THAT THIS IS
23 UNAMBIGUOUS DOESN'T MEAN ANOTHER JUDGE IS GOING TO DO IT,
24 AND YOU HAVE TO INDEPENDENTLY DECIDE, AND BASED ON YOUR
25 TENTATIVE RULING, YOU DIDN'T LOOK AT LAWRENCE HELLER'S
26 DECLARATION WHERE HE SAYS UNDER OATH REPRESENTING CSI THAT
27 IT WAS A MUTUAL PROVISION, AND THAT'S WHAT IS THE SINGLE
28 MOST GLARING OMISSION, WITH ALL DUE RESPECT, IN YOUR

1 TENTATIVE RULING, IS THAT YOU DON'T TAKE THAT INTO YOUR
2 EVALUATION AT ALL. YOU LOOK AT THE FOUR CORNERS, AND YOU
3 SAY THAT PROVISION SEVEN-I, THE CLEAN SLATE PROVISION, ONLY
4 APPLIES IF THERE'S LITIGATION AMONG THE PARTIES SO THERE'S
5 NO VIOLATION WITH RESPECT TO THAT ON SCIENTOLOGY'S SIDE, AND
6 THEN WITH RESPECT TO 18-D, DON'T TELL ANYBODY ABOUT THE
7 EXISTENCE OF THIS SETTLEMENT AGREEMENT, THAT WASN'T VIOLATED
8 EITHER.

9 I MEAN ARMSTRONG'S PUT IN THE POSITION WHERE HE
10 FINDS OUT THAT SCIENTOLOGY IS ACTIVELY CONDUCTING AN APPEAL
11 IN HIS OWN CASE THAT HE BY THIS AGREEMENT IS PROHIBITED FROM
12 OPPOSING, AND HE GOES TO THE COURT OF APPEAL AND HE SAYS
13 COURT OF APPEAL, THIS IS THE AGREEMENT, I'M GIVING IT TO YOU
14 UNDER SEAL, IT SAYS THAT I CAN'T PARTICIPATE IN MY OWN
15 APPEAL, BUT I WANT TO ANYWAY. THE COURT OF APPEAL SAYS YES,
16 YOU CAN. THAT IS NOT CLEAR.

17 THAT'S IN THE RECORD HERE. THAT WAS NOT
18 CONSIDERED BY THE COURT, AND FOR THE PURPOSES OF SUMMARY
19 JUDGMENT IT'S TOO SOON AND IT'S TOO FAST, BECAUSE IT'S NOT
20 SO CLEAR CUT. AND JUDGE, GERHARDT (SIC) WHEN SCIENTOLOGY
21 FIRST SOUGHT TO ENFORCE THIS AGREEMENT UNDER THE RUBRIC OF
22 THE ORIGINAL SCIENTOLOGY LITIGATION, IT'S THAT ON THE RECORD
23 AND IT'S IN EVIDENCE BEFORE THE COURT, HE SAID THIS
24 AGREEMENT --

25 THE COURT: YES, YOU'VE ARGUED THAT FOR A LONG
26 TIME NOW. SOMETHING YOU WANT TO SAY IN RESPONSE?

27 MR. WILSON: VERY BRIEFLY. WHAT'S REALLY
28 HAPPENED HERE IS THAT THERE HAVE BEEN SEVERAL COURTS THAT

1 HAVE APPLIED THE GANDER RULE THAT TOOK A GANDER AT THE
2 AGREEMENT, REALIZED IT WASN'T AMBIGUOUS, AND HELD THAT IT
3 WAS ENFORCEABLE, HELD THAT THERE WAS NO SUCH MUTUALITY, THAT
4 THE CONFIDENTIALITY PROVISIONS WENT ONE WAY, JUDGE HOHIGIN
5 (SIC) AWARDED US A PRELIMINARY INJUNCTION. THAT WAS
6 AFFIRMED BY THE COURT OF APPEAL. JUDGE HORSICKS (SIC) FROM
7 LOS ANGELES GRANTED SUMMARY JUDGMENT ON SEVERAL CAUSES OF
8 ACTION. YOU GRANTED SUMMARY JUDGMENT ON SEVERAL CAUSES OF
9 ACTION PREVIOUSLY IN, I BELIEVE, DECEMBER, AND NOW YOU
10 GRANTED SUMMARY JUDGMENT AGAIN WITH THE AGREEMENT IN
11 PROPERLY DECIDING THAT YOU CAN LOOK AT THE FOUR CORNERS AND
12 YOU CAN SEE THAT THERE'S NO SUCH MUTUALITY PROVISION.

13 AS FAR AS THE HELLER DECLARATION IS CONCERNED,
14 MR. GREENE MISREPRESENTS WHAT'S IN THERE. IT DOESN'T SAY
15 THAT BOTH PARTIES WANTED THE MUTUALITY OF THE
16 CONFIDENTIALITY.

17 I THINK THAT THIS MATTER HAS BEEN ARGUED ENOUGH,
18 AND I REALLY DON'T THINK IT NEEDS ANY FURTHER ARGUMENT.

19 MR. GREENE: I'VE GOT HELLER'S PAPERS RIGHT HERE
20 IF THE COURT WANTS TO LOOK AT EXACTLY WHAT THEY SAY, AND I'M
21 SORRY, MR. WILSON, YOU'RE WRONG. WITH RESPECT TO THE COURT
22 OF APPEALS REVIEW OF THE PRELIMINARY INJUNCTION, THE COURT
23 OF APPEAL SPECIFICALLY AND EXPRESSLY WITHHELD ANY
24 DETERMINATION OF THE ENFORCEABILITY OF THE AGREEMENT. IT
25 ONLY LOOKED AT THE INJUNCTION. IT DID NOT EVALUATE AND MAKE
26 A JUDICIAL DETERMINATION WITH RESPECT TO THAT.

27 SO I WILL ALSO -- IN ARMSTRONG CLEARLY SETS OUT--
28 JUDGE BRECKENRIDGE (SIC) IN HIS DECISION SAID ARMSTRONG AND

1 HIS LAWYER WERE FREE TO TALK ABOUT SCIENTOLOGY. THEY TRIED
2 TO SHUT HIM UP BEFORE, AND HE SAID THEY'RE FREE TO TALK
3 ABOUT ANY OF ARMSTRONG'S EXPERIENCES, ANY OF THE DOCUMENTS
4 THAT WERE IN EVIDENCE, THEY -- THERE'S NO RESTRICTION.

5 SO WHY IN THE WORLD WOULD ARMSTRONG AT THAT POINT
6 IN HIS LIFE AFTER HAVING LITIGATED AGAINST SCIENTOLOGY FOR
7 FIVE YEARS AND THROUGH A THIRTY-DAY COURT TRIAL, COURT TRIAL
8 -- IT WASN'T A JURY TRIAL, WAS A COURT TRIAL -- WHERE THE
9 JUDGE SAYS YOU CAN SAY WHATEVER YOU WANT ABOUT YOUR FORMER
10 RELIGION, YOU CAN SAY WHATEVER YOU WANT TO, AND HE HAD A
11 CROSS-COMPLAINT THAT BY ALL INTENTS AND PURPOSES LOOKED LIKE
12 IT WAS A BELL RINGER, IT WAS SET TO GO TO TRIAL WITHIN THREE
13 MONTHS, AND HE GETS \$800,000 BUCKS. HE DIDN'T GET \$800,000
14 BUCKS JUST TO KEEP HIS MOUTH SHUT, GO AWAY INTO THE
15 FIRMAMENT AND SCIENTOLOGY CAN SAY YOU'RE A LIAR, YOU'RE A
16 PERJUROR, YOU'RE THIS AND YOU'RE THAT, AND IF YOU COME OUT
17 OF THE FIRMAMENT, WE'RE GOING TO HAMMER YOU AND GET AN
18 INJUNCTION AND PUT YOU IN JAIL IF YOU OPEN YOUR MOUTH AGAIN.

19 HE DIDN'T AGREE TO THAT, AND IT'S NOT REASONABLE
20 UNDER THE CIRCUMSTANCES TO CONCLUDE THAT HE HAD THAT INTENT
21 WHEN HE ENTERED INTO THE AGREEMENT, AND SCIENTOLOGY'S OWN
22 EVIDENCE, THEIR OWN EVIDENCE WHICH IS --

23 THE COURT: WELL, REALISTICALLY, MR. GREENE, FOR
24 THE ARMSTRONG POSITION, THEY SAY THERE'S A MUTUAL
25 CONFIDENTIALITY REQUIREMENT. HE POINTS TO HIS BELIEFS, THE
26 PURPORTED BELIEFS OF HIS ATTORNEY, AND WE HAVE THE STATEMENT
27 MADE BY AN ATTORNEY FOR ONE OF THE SCIENTOLOGY
28 ORGANIZATIONS.

1 MR. GREENE: THE PLAINTIFF HERE --

2 THE COURT: YES, BUT THE FACTS, THOSE FACTS ARE
3 NOT RELEVANT, AND WHEN ONE READS WITKIN, AND YOU CAN READ
4 IT, ONE WITKIN SUMMARY OF CALIFORNIA LAW, IT'S IN SECTION
5 84, PAGE 617, THE RULES OF INTERPRETATION OF WRITTEN
6 CONTRACTS ARE FOR THE PURPOSE OF ASCERTAINING THE MEANING OF
7 THE WORDS USED THEREIN. EVIDENCE CANNOT BE ADMITTED TO SHOW
8 INTENTION INDEPENDENT OF THE INSTRUMENT. THE WORDS ARE
9 CLEAR.

10 MR. GREENE: WELL, THE PROBLEM IS, JUDGE, WHEN
11 YOU LOOK AT --

12 THE COURT: SO WE HAVE -- THE FACT IS THAT
13 ARMSTRONG HASN'T RAISED A TRIABLE ISSUE AS TO WHETHER THE
14 PLAINTIFF BREACHED THE TERM OF THE SETTLEMENT AGREEMENT.
15 THE OTHER ARGUMENTS WITH REGARD TO OBSTRUCTION OF JUSTICE
16 AND HIS RIGHT TO FREE SPEECH UNDER THE FIRST AMENDMENT,
17 ET CETERA, WELL, THAT ITT CASE HAD DEALT WITH THAT.

18 MR. GREENE: NO, IT DIDN'T BECAUSE THE ITT
19 CASE --

20 THE COURT: IT'S POSSIBLE --

21 MR. GREENE: IT SAYS POSSIBLE, BUT FOR A WAIVER
22 TO BE EFFECTIVE --

23 THE COURT: IT'S POSSIBLE TO WAIVE EVEN FIRST
24 AMENDMENT FREE SPEECH --

25 MR. GREENE: FREE SPEECH RIGHTS.

26 THE COURT: -- BY CONTRACT.

27 MR. GREENE: CORRECT. IT SAYS THAT, BUT IT ALSO
28 SAYS THAT IN ORDER FOR THE WAIVER TO BE EFFECTIVE, IT'S

1 ESSENTIALLY THE SAME STANDARD AS WHEN YOU ENTERED A GUILTY
2 PLEA IN A CRIMINAL CASE. IT'S GOT TO BE KNOWING,
3 INTELLIGENT, AND VOLUNTARY, AND THERE'S ABSOLUTELY NO
4 EVIDENCE HERE THAT SUCH WAS A CASE, PARTICULARLY IN LIGHT OF
5 HELLER'S DECLARATION, SCIENTOLOGY'S OWN COUNSEL, SAYS BOTH
6 PARTIES WERE SUBJECT TO KEEPING THEIR MOUTH SHUT ABOUT THE
7 OTHERS.

8 MS. BARTILSON: EXCUSE ME, YOUR HONOR, BUT I
9 HAVE TO JUST DIFFER WITH MR. GREENE'S CHARACTERIZATION OF NO
10 EVIDENCE. THERE IS A VIDEOTAPE OF THE SIGNING OF THE
11 AGREEMENT SHOWING MR. ARMSTRONG SIGNING IT VOLUNTARILY.
12 MR. ARMSTRONG HAS PUT IN DECLARATION AFTER DECLARATION
13 SAYING HE DISCUSSED IT WITH MULTIPLE ATTORNEYS BEFORE HE
14 SIGNED IT. I DON'T THINK THAT THAT'S -- THERE'S EVEN ANY
15 QUESTION OF FACT AS TO WHETHER OR NOT HE ENTERED INTO IT
16 VOLUNTARILY WITH FULL KNOWINGNESS OF THE PROVISIONS.

17 THE COURT: THERE'S NO REASON TO CHANGE MY
18 TENTATIVE RULING.

19 MR. GREENE: WELL, BEFORE YOU TELL ME I CAN'T
20 TALK ANYMORE, I WANT TO KEEP --

21 THE COURT: WELL, THAT'S WHAT I'M SAYING.

22 MR. GREENE: I WANT TO GIVE YOU ANOTHER CASE,
23 JUDGE, WITH RESPECT TO THEIR OBJECTIONS TO HEARSAY AND YOUR
24 CHARACTERIZATION --

25 THE COURT: NO.

26 MR. GREENE: THE EXCEPTION --

27 THE COURT: NO.

28 MR. GREENE: -- IS 1241(A) CONTEMPORANEOUS

1 STATEMENT BY --

2 THE COURT: WE'LL GO ON TO BLACK POINT FOREST
3 PROJECT --

4 MR. GREENE: JUDGE, ALSO --

5 THE COURT: EXCUSE ME, MR. GREENE.

6 MR. GREENE: JUDGE --

7 THE COURT: YOUR MATTER'S OVER.

8 MR. GREENE -- WITH RESPECT TO --

9 THE COURT: I'VE GIVEN YOU MORE THAN TWENTY
10 MINUTES. THIS IS A LAW AND MOTION MATTER. TIME IS UP.

11 MR. GREENE: I UNDERSTAND, JUDGE, BUT THE WAY
12 THAT THIS PRELIMINARY INJUNCTION IS BROADER THAN THE
13 LANGUAGE OF THE CONTRACT ITSELF. IT'S BROADER THAN THE
14 LANGUAGE OF THE CONTRACT ITSELF.

15 THE COURT: BLACK POINT FOREST VERSUS THE CITY OF
16 NOVATO.

17 MR. GREENE: AND ALSO IT'S -- AND IT'S WAY
18 BROADER, AND IN ADDITION, IT TAKES MY FILE IN THIS CASE AND
19 YOUR ORDER IS ALSO WRONG BECAUSE YOU'VE STRICKEN --

20 THE COURT: I'LL HAVE YOU TAKEN AWAY, MR. GREENE.

21 MR. GREENE: -- YOU'VE STRICKEN HIS EVIDENCE AND
22 YOU'VE DENIED HIS ABILITY --

23 THE COURT: EXCUSE ME, MR. GREENE.

24 MR. GREENE: -- TO EVEN APPEAL THIS --

25 THE COURT: YOU'RE INTERFERING WITH ANOTHER CASE.

26 MR. GREENE: -- GIVEN --

27 THE COURT: EXCUSE ME, MR. GREENE.

28 MR. GREENE: THE BREADTH OF YOUR ORDER AND THE

1 EFFECT OF IT, JUDGE, IS THAT YOU'VE MADE IT IMPOSSIBLE FOR
2 ARMSTRONG TO EFFECTIVELY APPEAL. THE INCORRECT DECISION
3 THAT YOU'RE RENDERING NOW, BECAUSE YOU SAY THAT HIS EVIDENCE
4 IS IRRELEVANT AND HAS TO BE STRICKEN --

5 THE COURT: EXCUSE ME. EXCUSE ME.

6 (WHEREUPON, PROCEEDINGS WERE CONCLUDED)

7 --OOO--

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
)
COUNTY OF MARIN)

I, ELAINE PASSARIS, DO HEREBY CERTIFY THAT I AM A
DULY CERTIFIED SHORTHAND REPORTER OF THE STATE OF
CALIFORNIA, AND THAT AS SUCH REPORTER I ATTENDED THE
HEARING OF THE FOREGOING CAUSE AND TOOK IN STENOGRAPHY THE
PROCEEDINGS HAD IN THE ABOVE-ENTITLED MATTER.

THAT I THEREAFTER CAUSED THE FOREGOING PROCEEDINGS
OF SAID ACTION TO BE TRANSCRIBED BY COMPUTER UNDER MY
DIRECTION, AND THAT THE FOREGOING PAGES CONSTITUTE A TRUE
AND CORRECT TRANSCRIPT OF SAID STENOGRAPHY SO TAKEN.

DATED: October 30, 1975

Elaine Passaris
ELAINE PASSARIS, C.S.R.
CERTIFICATE NO. 2948

PUBLISH P. 2

UNITED STATES DISTRICT COURT
DENVER, COLORADO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

SEP 15 1995

Civil Action No. 95-B-2143

JAMES R. MANSPEAKER
CLERK

RELIGIOUS TECHNOLOGY CENTER, a California non-profit corporation, ~~BY CORPORATION~~

Plaintiff,

v.

F.A.C.T.NET, INC., a Colorado corporation: LAWRENCE WOLLERSHEIM,
an individual; and ROBERT PENNY, an individual,

Defendant.

MEMORANDUM OPINION AND ORDER

KANE, J.

On August 21, 1995 Religious Technology Center ("RTC"), a California non-profit corporation, filed a verified complaint against Lawrence Wollersheim, Robert Penny and F.A.C.T.NET, Inc. ("FACTNET") for injunctive relief and damages for copyright infringement (17 U.S.C. § 501) and trade secrets misappropriation (Colo. Rev. Stat. § 7-74-102 to -110 (1986)).

Jurisdiction is based on 28 U.S.C. §§ 1331 and 1338(a) and (b) in that this is an action for copyright infringement under 17 U.S.C. § 501. Supplemental jurisdiction exists under 28 U.S.C. § 1367 over the trade secrets misappropriation claim, which RTC alleges arises out of the same transaction and occurrences.

Before me is RTC's motion for preliminary injunction.

I. Background.

RTC is one of the formal entities constituting the Church of Scientology (the "Church") founded by L. Ron Hubbard. FACTNET is a non-profit educational and charitable corporation registered and

with its principle place of business in Colorado. Wollersheim and Penny are former Scientologists.¹ Wollersheim serves as President of the Board and Executive Director of FACTNET and Penny is a member of the FACTNET Board.

Defendants, operating on minimal financial resources, maintain a library and archive information concerning, inter alia, an ongoing public controversy regarding the Church's status as a religious tax exempt organization and charges that its practices involve harmful psychological coercion which has resulted in mental and physical harm to a significant number of its adherents.

Much of the information maintained by Defendants is made available publicly on FACTNET's Bulletin Board Service on the international computer network known as the Internet.² Other data is stored in a private portion of the FACTNET library which includes information concerning and provided by former Scientologists and their families.

RTC alleges Defendants have placed on the Internet unauthorized copies of unpublished religious works called OT materials, often referred to as "Advanced Technology." They list

¹ The Church of Scientology and Wollersheim have opposed each other in litigation in various cases. In Wollersheim v. Church of Scientology, 15 Cal. App. 4th 1476 (Cal. Ct. App. 1992), an action in which Wollersheim alleged intentional and negligent infliction of emotional injury, the court affirmed its prior judgment in his favor as to the cause of action for intentional infliction with the exception of the \$30 million damage award which it reduced to \$500,000 for compensatory damage and \$2 million for punitive damages. A final judgment which the evidence discloses remains unpaid.

² A bulletin board service ("BBS") usually requires users to dial in through telephone lines to access specialized information or services.

the materials in issue ("the Works") in Exhibit "A" to the complaint.

RTC maintains it has the exclusive license to the Works. It asserts the materials consist of unpublished works of L. Ron Hubbard, the founder of the Church of Scientology. The Church only permits access to each of the works to members who have attained the proper level of spiritual enlightenment and made the requisite financial contributions. Such access is through a highly controlled system known as "auditing" involving supervision by a senior member of the Church. RTC claims the Works are available at only seven sites around the world and are never removed from these locations.

Defendants maintain any of the Works in its possession were obtained lawfully and are maintained in the non-public section of Defendants' library. Wollersheim has provided consulting services to lawyers representing clients in litigation involving the Church but denied making copies of the Works for this purpose. Defendants assert they have not posted any of the Works to the Internet for public availability and that it is their policy not to do so.

According to Wollersheim, the only deviation from this policy was between August 1 and August 3, 1995, when, due to miscommunication, Arnold P. Lerma, a FACTNET director posted some of the Works to the Internet. The portions of the Works published by Lerma had been part of an unsealed public court record in the Central District of California in Church of Scientology

International v. Fishman, No. CV 91-6426 HLH (Tx) C.D. Cal.³ These materials were attached to an affidavit filed by Fishman in that case. Wollersheim testified he received a copy of the affidavit from Fishman's counsel in the course of the consulting services Wollersheim provided in that case.

On August 15, 1995, Defendants posted a message to a newsgroup on the Internet claiming Lerma had acted on their behalf and with their endorsement and that they stood behind his actions.

II. Procedural History.

On August 21, 1995, Judge Babcock, ruling on ex parte motions, granted a temporary restraining order against Defendants. His order restrained Defendants from the unauthorized copying, use or reproduction of the Works identified in Exhibit "A" to the complaint or any other part of the works that are part of the Advanced Technology, in particular the copying into "any computer data base, information service, storage facility, archives, or other computerized network or facility." The order further restrained the destruction or concealing by Defendants of such Works in their possession. It also required RTC to file a bond in

³ On August 11, 1995, RTC sued Lerma in the United States District Court for the Eastern District of Virginia for copyright infringement and trade secret misappropriation in Religious Technology Center v. Lerma, No. 95-1107-A. On August 11, 1995, RTC obtained a restraining order and order of seizure and impoundment against Lerma. On August 22, 1995, RTC amended its complaint in that case, adding the Washington Post and two of its reporters as defendants. On August 30, 1995, that court denied RTC's motion seeking to enjoin the Post defendants from copying, disclosing, using, displaying, or reproducing Advanced Technology materials which it had obtained from the same public court file.

the amount of \$10,000 with the court forthwith. Judge Babcock set a hearing for a preliminary injunction before me on August 25, 1995 due to his being unavailable on that date.

Judge Babcock ordered Defendants to deliver the infringing articles within their possession and control into the custody of RTC's counsel. In this regard, he issued a writ of seizure and ordered a portion of the court file sealed until execution of the writ of seizure. Judge Babcock also granted RTC's motion for expedited discovery, ordering the depositions of all three Defendants to take place on August 23, 1995.

On August 22, 1995, extensive materials, including computer equipment, computer software and voluminous documents were seized from Defendants' premises pursuant to the writ. They were placed in the custody of RTC's counsel who proceeded to search for allegedly infringing materials.

On August 23, 1995, Defendants filed motions for a protective order, for temporary stay of expedited discovery and to require immediate delivery of confidential, proprietary, and privileged documents belonging to Defendants to their counsel of record, Thomas B. Kelley. RTC filed an opposition to the motion for a stay.

On August 24, 1995 I ordered an extension of the time for taking the depositions of Defendants and an extension of the restraining order until September 8, 1995 when the preliminary injunction hearing commenced. On August 25, 1995 I ordered Defendant's counsel or his representative be allowed to be present

while Plaintiff's counsel searched the impounded evidence. I further ordered any items to which Defendants' might claim privilege to be segregated from the materials impounded and handed over to the court.

The preliminary injunction hearing took place before me on September 8, 11, and 12, 1995. At the termination thereof, I issued an oral ruling. I denied RTC's request for a preliminary injunction and ordered RTC to return and restore to the Defendants all seized materials. I ordered Defendants to maintain the status quo as to the possession of all copyrighted materials at issue in the case and restricted each of Defendants to making only fair use of the materials. I reserved the right to clarify my oral order by way of a written opinion. This is that opinion.

III. Preliminary Injunction.

I have authority to issue a preliminary injunction under Federal Rule of Civil Procedure 65. In addition, the Copyright Act specifically authorizes me to grant a preliminary injunction "on such terms as [I] may deem reasonable to prevent or restrain infringement of a copyright." 17 U.S.C. § 502. The Colorado Uniform Trade Secrets Act similarly grants me the power to grant injunctive relief "to prevent or restrain actual or threatened misappropriation of a trade secret."

A preliminary injunction is an extraordinary remedy providing the potential for considerable harm yet its emergency nature does not afford the court the usual degree of careful consideration afforded by the deliberative processes of a trial. As a

consequence, the issuance of such an injunction, like the power of contempt, is one which is at best used sparingly, if at all.

Moreover, the very purpose of an injunction is to preserve the status quo ante. That is a rather elegant piece of Latin which means the last existing state of peaceable, noncontested conditions which preceded the pending controversy. I will not dwell on this, but it is helpful to observe that our legal forefathers were not fools; the complete phrase is status quo ante bellum which literally means "the state of things before the war began."

Given this purpose and the caution the law prescribes there are four basic considerations or findings which must be made before an injunction can issue. These same four factors likewise assist in determining the scope of the injunction and the conditions which attach to it.

A party seeking injunctive relief must establish:

- (1) it will suffer irreparable injury unless the injunction issues;
- (2) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party;
- (3) the injunction would not be adverse to the public interest; and
- (4) substantial likelihood that the movant will eventually prevail on the merits.

Walmer v. United States Dep't of Defense, 52 F.3d 851, 854 (10th Cir. 1995). The Tenth Circuit has adopted a modified interpretation of the fourth "likelihood of success" element. Id. "If the movant has satisfied the first three requirements for a preliminary injunction, the movant may establish likelihood of

success by showing questions going to the merits so serious, substantial, difficult and doubtful, as to make the issues ripe for litigation and deserving of more deliberative investigation." Id. This modified test applies, however, only where the first three requirements are satisfied.

Similarly, the less rigorous test for injunctive relief sometimes employed in copyright cases is only applicable where the plaintiff has made a prima facie showing of infringement. See, e.g., Financial Control Assoc's v. Equity Builders, Inc., 799 F. Supp. 1103, 1113 (D. Kan. 1992); 3 Melville B. Nimmer & David Nimmer, Nimmer on Copyright § 14.06[A] (1995).

The circumstances of this case warrant consideration and balancing of all four factors.

A. Substantial Likelihood of Success on the Merits.

1. Copyright Infringement Claim.

RTC contends it will succeed on the merits of its claims for copyright infringement because it owns a valid copyright and the copyrighted work was copied by Defendants without its authorization.

To prevail in a copyright infringement action, a plaintiff must prove (1) ownership of a valid copyright and (2) defendant copied, "protected components of the copyrighted material." Gates Rubber Co. v. Bando Chemical Indus., Ltd., 9 F.3d 823, 831 (10th Cir. 1993). If a certificate of registration in accordance with 17 U.S.C. § 410(c) has been obtained, there is a presumption in favor of the plaintiff that a valid copyright exists. Id. at 832. The

defendant then has the burden of overcoming this presumption. Id.

RTC claims it has certificates of registration for the Works, is their exclusive licensee and is entitled to protect them as if it were the original holder of the copyrights. At the outset of the preliminary injunction hearing, Defendants' counsel stipulated only for the purposes of this proceeding that the Works were originated by L. Ron Hubbard and that RTC has a valid title to the copyright in the Works.

Once a plaintiff shows it holds a valid copyright, it must then prove the defendant unlawfully appropriated some protected portions of the copyrighted work at issue. Id. This question breaks down into two separate inquiries:

- 1) [W]hether the defendant, as a factual matter, copied portions of the plaintiff's [writings]; and
- 2) whether, as a mixed issue of fact and law, those elements of the [writings] that have been copied are protected expression and of such importance to the copied work that the appropriation is actionable.

Id. In Gates Rubber the court noted that the inquiry does not end with a finding that the defendant copied the plaintiff's materials. "Liability for copyright infringement will only attach where protected elements of a copyrighted work are copied." Id. at 833.

The Copyright Act provides:

In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

17 U.S.C. § 102(b). The 1976 House Report noted copyright protection does not preclude others from using the ideas or

information revealed by the author's work, rather it refers only to the expression of the work adopted by the author. H.R. Rep. No. 1476, 94th Cong., 2d Sess. 57 (1976), reprinted in 17 U.S.C.A § 102 app. at 17 (1976)).

RTC asserts Defendants themselves and through others directly copied the copyrighted Works. It maintains Defendants duplicated portions of the Advanced Technology materials onto a newsgroup⁴ on the Internet and onto a Web site,⁵ making them accessible to Internet subscribers. These subscribers could then download the works onto their own computers and have personal copies.

RTC additionally claims Defendants provided Arnaldo Lerma with copies of the materials at issue. Lerma ultimately posted these copies onto the Internet. RTC claims the act of providing Lerma with the copies constitutes contributory copyright infringement.

The evidence showed, however, that, apart from the Lerma posting, the only copying of the Works by Defendants was scanning them onto their computer and placing them in the private section of their library without making them available to the public over the Internet or otherwise. Copying of this sort by Defendants falls within the well established limitation on the exclusive right of copyright ownership recognized in the Copyright Act, 17 U.S.C § 107.

⁴ A "newsgroup" is an electronic discussion group, serving as a bulletin board for users to post universally accessible messages, and to read and reply to those from others.

⁵ World Wide Web is a network of computers on the Internet that maintains documents users can read and transfer with a number of programs.

Under this limitation, "the fair use of a copyrighted work . . . for purposes such as criticism, comment, news reporting, teaching . . . scholarship, or research, is not an infringement of copyright." 17 U.S.C.A. § 107. The Copyright Act lists four factors for consideration in determining whether a particular use made of a work is fair use:

- (1) the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

Id.

"Fair use" is a factual determination. Harper & Row, Publishers, Inc. v. Nation Enterprises, 471 U.S. 539, 549 (1985). Each fact must be assessed in light of the total circumstances of the case and then a conclusion can be made as to whether the doctrine applies.

In Harper & Row, a magazine editor obtained a copy of a copyrighted manuscript which he knew he was not authorized to publish. In an attempt to get a "scoop" on the magazine that had the rights to publish the piece, he published excerpts from it. The Court found for the copyright holders, determining on a factor by factor basis that there was no valid fair use on the part of the defendant. the Court held the questioned publication's effect on the market is the "single most important element of fair use." Id.

at 566.

Even if, as RTC maintains, the Works have not been published, the concerns of the Court in Harper & Row do not apply here. Defendants' use of the materials was not with the intention of depriving the planned publication of its full impact. Further, no evidence was presented as to the effect of the Defendants' copying of the Works upon the potential market for them.⁶

The evidence showed the Works are esoteric in nature and are delivered to certain followers by advanced Scientologists known as "auditors" as part of an elaborate system of instruction. The only financial harm RTC would suffer would be if followers were to forsake the Church's didactic methodology in favor of self instruction through the Works copied by Defendants. There was no suggestion, let alone evidence, of this potential for financial loss to the Church.⁷

⁶ This case is distinguishable from Bridge Publications, Inc. v. Vien, 827 F.Supp. 629 (S.D. Cal. 1993), appeal reinstated and transferred, 53 F.3d 344 (Fed. Cir. (Cal.) 1994). The Vien court held there was a copyright infringement and fair use did not apply. In that case, as here, an affiliate of the Church sued to enjoin the use of copyrighted works. There, however, the defendants were charging for classes that used the documents as part of their study. Id. at 632. The court found defendants used the materials for the same purposes as the holders of the copyright. Id. at 635. The court also found that there was a wholesale copying of the work and that this weighed heavily against fair use. Id. at 636. Finally, the Vien court found that because the defendant's use of the materials was substantially similar to that of the Church, there was an economic harm as demand for sale or distribution from the Church would diminish. Id.

⁷ An argument that RTC may be harmed financially by Defendants' intended criticism of the Works through copying would not prevail. In a similar case, the Second Circuit ruled that economic harm from criticism is not actionable under copyright

The alleged copying by the Defendants was not of a commercial nature. Rather, it was made for non-profit purposes to advance understanding of issues concerning the Church which are the subject of ongoing public controversy.

RTC has not introduced the Works in their entirety into evidence to enable comparison of the amount and substantiality of the portion of the Works copied with each copyrighted work as a whole. Notably, however, even if a work is introduced in its entirety, the copying may nevertheless constitute fair use. See, e.g., Sony Corp. v. Universal City Studios, 464 U.S. 417, reh'g denied, 465 U.S. 1112 (1984); Rotbart v. O'Dwyer Co., 34 U.S.P.Q. 2d 1085 (S.D.N.Y. 1985).

Defendants maintain and the evidence does not refute that the Lerma postings to the Internet were made in the context of ongoing dialogue in the particular newsgroup to which they were posted. they form part of the topical debate concerning whether the Works are of substance or are perpetuated as part of systemic mind control.

No evidence was introduced showing a likelihood that a follower of the Church would consider the postings by Lerma as a market substitute for the Works. Nor did the evidence show that the postings were of a commercial nature or had any effect on the potential market for the works. As such, the postings may well be considered as having been made for the purposes of criticism,

laws. New Era Publications Int'l v. Carol Publishing Group, 904 F.2d 152, 160 (2nd Cir.), cert. denied, 498 U.S. 921 (1990).

comment or research falling within the fair use doctrine.

At this preliminary stage of proceedings, I find RTC has not shown a substantial likelihood of success on the merits of its copyright claim.

2. Misappropriation of Trade Secrets Claim.

RTC claims Defendants have misappropriated its trade secrets by acquiring, disclosing and using portions of the Works without authorization. Such claim is governed by the Colorado Uniform Trade Secrets Act and is not preempted by federal copyright statutes. See Gates Rubber, 9 F.3d at 846-47.

Colorado defines trade secrets as:

[T]he whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, improvement, confidential business or financial information, listing of names, addresses, or telephone numbers, or other information relating to any business or profession, which is secret and of value. To be a "trade secret" the owner thereof must have taken measures to prevent the secret from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

Colo. Rev. Stat. § 7-74-102(4) (1986).

What constitutes a trade secret is a question of fact for the trial court. Gates Rubber, 9 F.3d at 848. Colorado courts apply a number of factors in determining whether a trade secret exists. They include:

- 1) the extent to which the information is known outside the business;
- 2) the extent to which it is known to those inside the business, i.e., by the employees;
- 3) the precautions taken by the holder of the trade secret to guard the secrecy of the information;

- 4) the savings effected and the value to the holder in having the information as against competitors;
- 5) the amount of effort or money expended in obtaining and developing the information; and
- 6) the amount of time and expense it would take for others to acquire and duplicate the information.

Colorado Supply Co., Inc. v. Stewart, 797 P.2d 1303, 1306 (Colo.App. 1990), cert. denied, Oct. 7, 1991.

Despite RTC and the Church's elaborate and ardent measures to maintain the secrecy of the Works; they have come into the public domain by numerous means. RTC's assertion that the only way in which the materials have escaped its control was through two thefts in Denmark and England was not supported by the evidence. A former senior Scientology official testified to ongoing difficulties the Church incurred in keeping the Works secret, including members losing materials in their possession. The evidence also showed portions of the Works have been made available on the Internet through persons other than Lerma, with the potential for downloading by countless users.

The Works posted by Lerma were publicly available as part of an unsealed public court record in the Central District of California in Church of Scientology International v. Fishman, No. CV 91-6426 HLH (Tx), C.D. Cal. Wollersheim testified copies of the Works in his possession were sent to him by an attorney representing defendants in that case for whom he had provided consulting services.

In August 1995, reporters of the Washington Post obtained copies of the Works from the unsealed Fishman file. The

newspaper's publication of portions of the materials prompted RTC to request injunctive relief in Religious Technology Center v. Lerma, Civil Action No. 95-1107-A (E.D. Va.). On August 30, 1995, that court found the materials had escaped into the public domain and onto the Internet and that Lerma was not their only source on the Internet. Id., slip op. at 14-15 (E.D. Va. Aug. 30, 1995). The court concluded RTC could not establish for the purpose of the preliminary injunction motion that the documents were "not generally known" as required by the Virginia statute.

In the course of the hearing before me, RTC changed its position with regard to what materials constitute the purported trade secrets. At the outset, RTC maintained the entire Works were trade secrets. After evidence was heard indicating that the Works were in the public domain, RTC claimed that only portions of the Works, rather than the whole were secret. RTC's ambivalence and admission as to the non-secret nature of certain portions of the Works casts some doubt casts on the secret status of Works as a whole.

The evidence showed the Works are widely known outside of the Church through multiple sources. As such, they are not secret within the meaning of the Colorado statute and RTC has not shown a substantial likelihood of success on the merits of its trade secrets claim.

B. Irreparable harm.

I do not find RTC will suffer irreparable harm if the broad injunction sought is not granted. There has been no showing that

RTC has lost nor will lose competitive advantage through Defendants' fair use of the Works, nor that such use has been for commercial purpose.

RTC claims use of the materials impedes its right to exercise its religious belief that the materials must be kept secret. I am not persuaded that a denial of the injunction sought will deprive followers of the Church of their freedom to exercise their religious beliefs. RTC effectively requests that I advance its religion at the expense of Defendants' lawful rights to use the materials for the purposes of criticism and research. The United States Constitution, common law and the Copyright Act preclude me from doing so.

C. Balancing of Hardships.

The evidence does not reflect that the threatened injury to RTC outweighs the damage the broad injunction sought may cause the Defendants. Such relief would effectively pull the plug on Defendants' electronic library, infringe not only on their rights of criticism and research but be the death knell of FACTNET. Any threatened injury to RTC is outweighed by this potentially devastating hardship to Defendants.

D. Public Interest.

Public interest lies with the free exchange of dialogue on matters of public concern. The injunction sought would silence the Defendants as participants in an ongoing debate involving matters of significant public controversy. Relief of this kind does not serve the public interest.

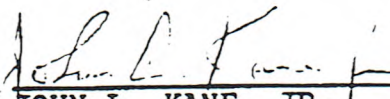
IV. Conclusion.

Having weighed all the relevant factors, I conclude RTC has not shown a substantial likelihood of success on the merits and the balance of harms weighs in favor of Defendants. Accordingly, IT IS ORDERED THAT Plaintiff's motion for preliminary injunction is DENIED;

IT IS FURTHER ORDERED THAT Plaintiff is to return and restore to Defendants immediately and at Plaintiff's expense all seized materials in the condition they were when taken and to the precise places from which they were taken;

IT IS FURTHER ORDERED THAT Defendants are to maintain the status quo as to their possession of all copyrighted materials at issue in this case and are restricted to making only fair use thereof. Defendants are prohibited from making any additional copies of the materials or transferring them in any manner or publicizing them other than in the context of fair use.

Dated this 15th day of September, 1995 at Denver, Colorado.



JOHN L. KANE, JR.
U.S. SENIOR DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
JAMES R. MANSPEAKER, CLERK
U.S. Courthouse
1929 Stout Street, C-145
Denver, CO 80294
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Date: September 15, 1995

Case No. 95-B-2143

The undersigned hereby certifies that on the above date a true and correct copy of the preceding **MEMORANDUM OPINION AND ORDER** signed by Judge John L. Kane, Jr. on **September 15, 1995** was mailed to the following:

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By: *N. Hatcher*
Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHURCH OF SCIENTOLOGY
INTERNATIONAL,

Plaintiff,

- against -

TIME WARNER, INC., TIME INC.
MAGAZINE COMPANY, and RICHARD
BEHAR,

Defendants.

92 Civ. 3024 (PKL)

OPINION AND ORDER

APPEARANCES

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LEISURE, District Judge:

Plaintiff Church of Scientology International ("CSI") brought this action to recover for damages allegedly suffered from the publication of false and defamatory statements concerning CSI in the cover story of the May 6, 1991 issue of Time magazine. Defendants Time Warner, Inc., Time Inc. Magazine Company, and Richard Behar (collectively "Time") move this Court for summary judgment, pursuant to Federal Rule of Civil Procedure 56, on the grounds that they lacked actual malice in publishing the article about CSI, an admitted public figure. See Plaintiff's Response to Defendants' First Set of Requests for Admission to Plaintiff. For the reasons stated below, defendants' motion is granted in part and denied in part.

DISCUSSION

"Summary judgment is proper only if, viewing all evidence in the light most favorable to the nonmoving party, there is no genuine issue of material fact" as to an essential element of a claim. Buttry v. General Signal Corp., No. 95-7135, 1995 WL 628556, at *3 (2d Cir. Oct. 26, 1995). A public figure suing for libel must prove, as one of the essential elements of the claim, that the defendant published the material with actual malice, i.e., actual knowledge of its falsity or with serious subjective doubts as to its truth. See New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964); St. Amant v. Thompson, 390 U.S. 727, 731-32 (1968). The First Amendment further requires that the

plaintiff prove actual malice with clear and convincing evidence. See id. Therefore, "there is no genuine issue if the evidence presented in the opposing affidavits is of insufficient caliber or quantity to allow a rational finder of fact to find actual malice by clear and convincing evidence." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 254 (1986).

Although a defendant's state of mind is at issue in a libel case covered by New York Times, that fact alone cannot preclude summary judgment, for First Amendment protection cannot be emasculated by unwillingness on the part of a court to grant summary judgment where "affirmative evidence of the defendant's state of mind" is lacking. A libel suit cannot be allowed to get to the jury, at enormous expense to the defendant, based on mere assertions of malice by the plaintiff. Cf. St. Surin v. Virgin Islands Daily News, Inc., 21 F.3d 1309, 1318 (3d Cir. 1994) ("Summary judgment for the publisher is quite often appropriate because of the difficulty a public official has in showing 'actual malice.'"). Indeed, without judicious use of summary judgment to dispose of libel suits, "the threat of being put to the defense of a lawsuit . . . may be as chilling to the exercise of First Amendment freedoms as fear of the outcome of the lawsuit itself." Immuno AG. v. Moor-Jankowski, 74 N.Y.2d 548, 561, 549 N.E.2d 129, 135, 549 N.Y.S.2d 938, 944 (1989) (internal quotation marks omitted), vacated, 497 U.S. 1021 (1990), adhered to, 77 N.Y.2d 235, 567 N.E.2d 1270, 566 N.Y.S.2d 906 (1991), cert. denied, 500 U.S. 954 (1991). Because the freedoms guaranteed by

the First Amendment are designed to ensure that debate, not litigation, is vigorous, the subjective nature of the test of liability cannot create a bar to summary disposition of libel suits.¹ See McLee v. Chrysler Corp., 38 F.3d 67, 68 (2d Cir. 1994) (ruling that district court's view -- that summary judgment was unavailable in discrimination cases where employer's intent was at issue -- was unsupportable). Indeed, this Court finds little to distinguish silence enforced by oppressive litigation from "silence coerced by law -- the argument of force in its worst form." Whitney v. California, 274 U.S. 357, 375-76 (1927) (Brandeis, J., concurring).

In addition, the court must "consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks." New York Times Co., 376 U.S. at 270. As quoted in New York Times,

¹ In this respect, the Court notes that both debate and litigation have been vigorous in the case at bar. CSI published an 80-page rebuttal to the Time article, which it distributed to church members, business leaders, and political figures. See Memorandum of Law in Support of Defendants' Motion for Summary Judgment ("Def.'s Memo.") at 3. In addition, CSI published a series of full-page advertisements in USA Today challenging the article and Time's accuracy and biases in publishing it. See id.; Affidavit of Lynn R. Farny ("Farny Aff.") ¶ 16, Exs. 14, 15. The discovery in this case has been extensive, even though discovery has not yet been directed to the issue of truth or falsity. For example, Richard Behar, the author of the article, was deposed for 16 1/2 days over a 12 month period. See Def.'s Memo. at 4. The submissions to the court in support of or in opposition to this motion consist of thousands of pages of memoranda, affidavits, and exhibits.

"In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy."

Id. at 271 (quoting Cantwell v. Connecticut, 310 U.S. 296, 310 (1940)). Because sharp disagreement is essential to robust debate about important issues, "[a]ctual malice under the New York Times standard should not be confused with the concept of malice as an evil intent or a motive arising from spite or ill will." Mason v. New Yorker Magazine, Inc., 501 U.S. 496, 510 (1991). The speaker's belief in his statements, even his exaggerations, enhances, rather than diminishes, the likelihood that they are protected from libel attack by the First Amendment. Only where the speaker himself lacks this conviction, where the speaker entertains serious doubt as to the veracity of his statements, is the false statement actionable. See St. Amant, 390 U.S. at 731.

As a threshold matter, then, the court considers plaintiff's assertions that Behar, after publishing an article in Forbes critical of the church,

targeted the church with a fixed view of it as a 'destructive cult.' In the next five years, through the publication of his article in the May 8, 1991 issue of Time, Behar

refined his focus -- gathering negative information from Scientology adversaries and proposing anti-Church articles -- while never changing any view about the Church, never accepting anything a Scientologist said and uniformly ignoring anything positive he learned about the Church.

Plaintiff's Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment at 2. As noted, malice in the sense of hatred or ill-will is often indicative of lack of the actual malice required under New York Times, and therefore would tend to undermine, not support, plaintiff's case. In addition, "reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing." St. Amant, 390 U.S. at 731. However, the combination of inadequate investigation with bias on the part of the publisher can give rise to an inference of actual malice. See Harte-Hanks Communications, Inc. v. Connaughton, 491 U.S. 657, 682 (1989). With a showing of an extreme departure from standard investigative techniques, bias of the reporter becomes relevant to explain this extreme departure as more than mere carelessness -- rather as purposeful avoidance of the truth. Plaintiff therefore devotes much of its opposition to the motion to attempting to demonstrate Behar's predetermined bias toward the church. However, plaintiff has failed to demonstrate the correlative circumstance of inadequate investigation to make its evidence of bias probative of actual malice, rather than probative of lack thereof. Without a showing of inadequate investigation, bias merely confirms the publisher's firmly-held

belief in the allegedly defamatory statements.

With these principles in mind, the court considers each allegedly libelous statement individually to determine whether a rational finder of fact could find actual malice by clear and convincing evidence. See Tavoulareas v. Piro, 817 F.2d 762, 794 (D.C. Cir.) (en banc) ("[D]efamation plaintiffs cannot show actual malice in the abstract; they must demonstrate actual malice in conjunction with a false defamatory statement." (emphasis in original)), cert. denied, 484 U.S. 870 (1987).

A. Statements Set Forth at ¶ 40

Paragraph 40 of the complaint sets forth several statements alleged to be false and defamatory. (The text of the sentences as they appear in the article is set forth below; the portions quoted in the complaint are underlined.)

1. "In reality the church is a hugely profitable global racket that survives by intimidating members and critics in a Mafia-like manner."
2. "Says Cynthia Kisser, the [Cult Awareness] network's Chicago-based executive director: 'Scientology is quite likely the most ruthless, the most classically terroristic, the most litigious and the most lucrative cult the country has ever seen. No cult extracts more money from its members.'"
3. "Those who criticize the church -- journalists, doctors, lawyers and even judges -- often find themselves engulfed in litigation, stalked by private eyes, framed for fictional crimes, beaten up or threatened with death."

1. Mafia-Like Intimidation

Time relied on many sources as the basis for its belief that "the church . . . survives by intimidating members and critics in a Mafia-like manner." None of these sources is so obviously incredible that a reasonable jury could infer from Time's reliance on their knowledge of falsity or subjective doubt as to veracity. See St. Amant, 390 U.S. at 732; cf. id. ("Professions of good faith will be unlikely to prove persuasive, for example, where a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified anonymous telephone call."). Compare Harte-Ranks, 491 U.S. at 691 ("The hesitant, inaudible, and sometimes unresponsive and improbable tone of Thompson's answers to various leading questions raise obvious doubts about her veracity."). On the contrary, Behar relied on affidavits from former high-ranking Scientologists, newspaper and periodical articles, interviews and personal experience, and published court opinions, often issued after the benefit of adversarial presentation of testimony, which supported his professed belief that CSI intimidated critics and members. See Affidavit of Richard Behar ("Behar Aff.") ¶¶ 28-61. The Court finds that based on this evidence, no reasonable jury could find that CSI had proven by clear and convincing evidence that Time either knew or entertained serious doubts that the statement was false.

2. Most Ruthless, Classically Terroristic Cult

This statement appeared in the article in the form of a quotation from Cynthia Kisser, executive director of the cult

Awareness Network. "Repetition of another's words does not release one of responsibility if the repeater knows that the words are false or inherently improbable, or there are obvious reasons to doubt the veracity of the person quoted or the accuracy of his reports." Goldwater v. Ginzburg, 414 F.2d 324, 337 (2d Cir. 1969), cert. denied, 396 U.S. 1049 (1970). Based on the material supporting Behar's statement regarding Mafia-like intimidation, see Behar Aff. ¶¶ 28-61; see also id. ¶¶ 62-67, Behar's repetition of Kisser's statement was not done with knowledge that the statement was false or inherently improbable. Nor are there obvious reasons to doubt Kisser's veracity. There is no doubt that her views are deeply opposed to CSI's views, and each likely regards the other's conduct as reprehensible if not criminal, see Farny Aff. ¶ 98, but such sharp disagreement and Kisser's obvious antagonistic relationship with Scientology does not amount to an obvious reason to doubt her veracity. On the contrary, as executive director of an organization dedicated to studying so-called cults, her judgment as to CSI's ruthlessness and terroristic practices likely carried credence with Behar. See id. ¶ 62. The Court therefore finds that a reasonable jury could not find that plaintiff had demonstrated actual malice on the part of Time in publishing this statement by clear and convincing evidence.

3. Journalists, Doctors, Lawyers, and Judges Framed, Beaten Up, or Threatened with Death

In light of Behar's beliefs regarding his own experiences with Scientology, the admitted harassment of Paulette Cooper by

Scientology's Guardian's Office (which has been disbanded), and the other sources relied on by Behar, see Behar Aff. ¶¶ 85-93, the Court finds no evidence that Behar made the statement regarding journalists with actual malice. Similarly, there are not "obvious reasons to doubt" Behar's sources for his statement regarding doctors, lawyers, and judges. See St. Amant, 390 U.S. at 732. Although Behar does not have convincing evidence to link CSI with many of the strange incidents befalling these groups of people in conflict with Scientology, that fact alone does not allow a reasonable jury to conclude that Behar entertained doubts as to the veracity of his statement that these incidents are linked to CSI. Compare id. at 732 (good faith unlikely where story is fabricated by defendant, based on his imagination, or based on unverified anonymous telephone call). Therefore, the Court finds that no reasonable jury could find by clear and convincing evidence that Time published the above statement with actual malice.

B. Statements Set Forth at ¶ 58

CSI challenges the following as false and defamatory:

"THE LOTTICKS LOST THEIR SON, Noah, who jumped from a Manhattan hotel clutching \$171, virtually the only money he had not yet turned over to Scientology. His parents blame the church and would like to sue but are frightened by the organization's reputation for ruthlessness.

"His death inspired his father Edward, a physician, to start his own investigation of the church. 'We thought Scientology was something like Dale Carnegie,' Lottick says.

'I now believe it's a school for psychopaths. Their so-called therapies are manipulations. They take the best and brightest people and destroy them.'

"It was too late. 'From Noah's friends at Dianetics' read the card that accompanied a bouquet of flowers at Lottick's funeral. Yet no Scientology staff members bothered to show up."

The primary sources relied on by Behar for these statements are the parents of Noah Lottick. The Lotticks affirmed the accuracy of each statement in the article. See Reply Memorandum of Law in Further Support of Defendants' Motion for Summary Judgment ("Def.'s Reply") at 12. Furthermore, the Lotticks are not obviously lacking in credibility, and the statements are not inherently improbable. Nevertheless, Behar made a thorough investigation of this aspect of his article by discussing it with various persons who knew Noah. Although Behar can be criticized for not interviewing Fred Lemons, an active Scientologist, asserted Scientology staff member, and former roommate of Noah Lottick, this omission is not such that it might raise an inference of purposeful avoidance of the truth. Cf. Harte-Hanks, 491 U.S. at 582 ("[W]hile denials coming from Connaughton's supporters might be explained as motivated by a desire to assist Connaughton, a denial coming from [the uninterviewed] Stephens would quickly put an end to the story."). Any information to be gleaned from Lemons might be expected to be similar to, though less authoritative than, information that might be obtained from the director of the Scientology Dianetics Center, whom Behar twice attempted to contact. See Behar Aff. ¶ 106. In short,

besides minor omissions in investigation, from which no inference of purposeful avoidance of the truth could reasonably be drawn, (even combined with Behar's alleged bias, ~~see supra~~) CSI has not produced evidence such that a reasonable jury could find by clear and convincing evidence that Behar published the statements with actual malice. On the contrary, as reflected in Behar's notes from one of his conversations with the Lotticks, it appears that Noah had spent the money to which he had access, that Dr. Lottick had concluded that Scientology therapies were manipulations, and that no Scientology staff members attended the funeral.² See Affidavit of Jonathan W. Lubell, Esq., at Ex. 41. Therefore, the Court finds that no reasonable jury could find by clear and convincing evidence that Time published the above statement with actual malice.

C. Statements Set Forth at ¶ 43

Of the statements set forth at paragraph 43 of the complaint, pursuant to this Court's ruling of November 23, 1992, only the following remains at issue:

"Scientology denies any tie to the Fishman Scam, a claim strongly disputed by both Fishman and his longtime psychiatrist, Uwe Geertz, a prominent Florida hypnotist. Both men claim that when arrested, Fishman was ordered by the church to kill Geertz and then do an 'EOC,' or end of cycle, which is church jargon for suicide."

² Although CSI asserts that Fred Lemons is a staff member, there is no evidence that Behar knew this fact. In addition, if Behar were trying to avoid this fact, he would not have contacted the Scientology center.

Behar relied on Steven Fishman, Uwe Geertz, Fishman's psychologist, Marc Nurik, Fishman's former counsel, Vicki Aznaran, a former Scientologist, and Robert Dondero, the assistant United States Attorney who prosecuted Fishman for stock fraud. Although Fishman in many respects is not highly credible, based on the corroboration of aspects of his claims by other sources, this Court finds that his claims are not obviously incredible. Cf. St. Amant, 390 U.S. at 732 (good faith unlikely where unverified reliance on obviously incredible source). Specifically, Behar relied on Geertz's evaluation of Fishman's claims, Vicki Aznaran's corroboration of Fishman and Geertz's claims regarding the length of Fishman's involvement with the church, the depth of knowledge of Scientology that Fishman demonstrated, and the corroboration of certain claims by Robert Dondero. The fact that Dondero did not believe Fishman's claims does not undermine Behar's belief because Dondero was at the time prosecuting Fishman, and that prosecution would be undermined by accepting Fishman's account of Scientology's involvement with Fishman. Cf. Harte-Hanks, 491 U.S. at 682 (denials coming from interested witnesses would not cause reporter to question veracity of allegations). Therefore, the Court finds that no reasonable jury could find by clear and convincing evidence that Time published the above statement with actual malice.

D. Statements set forth in ¶ 52

of the statements set forth at paragraph 52 of the

complaint, pursuant to this Court's ruling of November 23, 1992, only the following remains at issue:

"One source of funds for the Los Angeles-based church is the notorious, self-regulated stock exchange in Vancouver, British Columbia, ~~often~~ called the ~~can~~ capital of the world."

The court finds that a reasonable jury could find by clear and convincing evidence that Time published the above statement with actual malice.

CONCLUSION

For the reasons stated above, defendants' motion for summary judgment is HEREBY DENIED as to the statement set forth at paragraph 52 of the complaint, and HEREBY GRANTED as to all other statements.

SO ORDERED

New York, New York
November 14, 1995



U.S.D.J.

F O R T U N E

FAX COVER SHEET

1271 AVE. OF AMERICAS, NEW YORK, NEW YORK 10020
FAX NUMBERS: (212) 246-3375 (212) 765-2699

TO Dr. Uwe Geertz
FROM Richard Behn

This is Page 1 of 16 Pages

IF THERE IS A PROBLEM WITH THIS TRANSMISSION
CALL (212) 522-

Best regards!
Richard

47
307-340843
P. 01
FORD GREENE ESQ

FAX (415) 456-5318

UWE GEERTZ
(305) 434 5643

SUNUNU: Headed for a Fall?

TIME

SCIENTOLOGY

THE CULT OF GREED

HOW THE GROWING
DIANETICS EMPIRE
SQUEEZES MILLIONS FROM
BELIEVERS WORLDWIDE



● COVER STORY

The Thriving Cult of Greed and Power

Ruined lives. Lost fortunes. Federal crimes. Scientology poses as a religion but is really a ruthless global scam—and aiming for the mainstream.

By RICHARD BEHAR

By all appearances, Noah Lottick of Kingston, Pa., had been a normal, happy 24-year-old who was looking for his place in the world. On the day last June when his parents drove to New York City to claim his body, they were nearly catatonic with grief. The young Russian-studies scholar had jumped from a 10th-floor window of the Milford Plaza Hotel and bounced off the hood of a stretch limousine. When the police arrived, his fingers were still clutching \$171 in cash, virtually the only money he hadn't yet turned over to the Church of Scientology, the self-help "philosophy" group he had discovered just seven months earlier.

His death inspired his father Edward, a physician, to start his own investigation of the church. "We thought Scientology was something like Dale Carnegie," Lottick says. "I now believe it's a school for psychopaths. Their so-called therapies are manipulations. They take the best and brightest people and destroy them." The Lotticks want to sue the church for contributing to their son's death, but the prospect has them frightened. For nearly 40 years, the big business of Scientology has shielded itself exquisitely behind the First Amendment as well as a battery of high-priced criminal lawyers and shady private detectives.

The Church of Scientology, started by science-fiction writer L. Ron Hubbard to "clear" people of unhappiness, portrays itself as a religion. In reality the church is a hugely profitable global racket that survives by intimidating members and critics in a Mafia-like manner. At times during the past decade, prosecutions against Scientology seemed to be curbing its men-

ace. Eleven top Scientologists, including Hubbard's wife, were sent to prison in the early 1980s for infiltrating, burglarizing and wiretapping more than 100 private and government agencies in attempts to block their investigations. In recent years hundreds of longtime Scientology adherents—many charging that they were mentally or physically abused—have quit the church and criticized it at their own risk. Some have sued the church and won; others have settled for amounts in excess of \$500,000. In various cases judges have labeled the church "schizophrenic and paranoid" and "corrupt, sinister and dangerous."

Yet the outrage and litigation have failed to squelch Scientology. The group, which boasts 700 centers in 65 countries, threatens to become more insidious and pervasive than ever. Scientology is trying to go mainstream, a strategy that has sparked a renewed law-enforcement campaign against the church. Many of the group's followers have been accused of committing financial scams, while the church is busy attracting the unwary through a wide array of front groups in such businesses as publishing, consulting, health care and even remedial education.

In Hollywood, Scientology has assembled a star-studded roster of followers by aggressively recruiting and regally pampering them at the church's "Celebrity Centers," a chain of clubhouses that offer expensive counseling and career guidance. Adherents include screen idols Tom Cruise and John Travolta, actresses Kirstie Alley, Mimi Rogers and Anne Archer, Palm Springs mayor and performer Sonny Bono, jazzman Chick Corea and even Nancy Cartwright, the voice of cartoon star Bart Simpson. Rank-and-file members, however, are dealt a less glamorous Scientology.

According to the Cult Awareness Network, whose 23 chapters monitor more than 200 "mind control" cults, no group



L. Ron Hubbard, 1911-86: the cult's founder and continuing inspiration

prompts more telephone pleas for help than does Scientology. Says Cynthia Kisser, the network's Chicago-based executive director: "Scientology is quite likely the most ruthless, the most classically terroristic, the most litigious and the most lucrative cult the country has ever seen. No cult extracts more money from its members." Agrees Vicki Aznaran, who was one of Scientology's six key leaders until she bolted from the church in 1987: "This is a criminal organization, day in and day out. It makes Jim and Tammy [Bakker] look like kindergarten."

To explore Scientology's reach, TIME conducted more than 150 interviews and reviewed hundreds of court records and internal Scientology documents. Church officials refused to be interviewed. The investigation paints a picture of a depraved yet thriving enterprise. Most cults fail to outlast their founder, but Scientology has prospered since Hubbard's death in 1986.

In a court filing, one of the cult's many entities—the Church of Spiritual Technology—listed \$503 million in income just for 1987. High-level defectors say the parent organization has squirreled away an estimated \$400 million in bank accounts in Liechtenstein, Switzerland and Cyprus. Scientology probably has about 50,000 active members, far fewer than the 8 million the group claims. But in one sense, that inflated figure rings true: millions of people have been affected in one way or another by Hubbard's bizarre creation.

Scientology is now run by David Miscavige, 31, a high school dropout and second-generation church member. Defectors describe him as cunning, ruthless and so paranoid about perceived enemies that he kept plastic wrap over his glass of water. His obsession is to attain credibility for Scientology in the 1990s. Among other tactics, the group:

- Retains public relations powerhouse Hill and Knowlton to help shed the church's fringe-group image.

- Joined such household names as Sony and Pepsi as a main sponsor of Ted Turner's Goodwill Games.

- Buys massive quantities of its own books from retail stores to propel the titles onto best-seller lists.

- Runs full-page ads in such publications as *Newsweek* and *Business Week* that call Scientology a "philosophy," along with a plethora of TV ads touting the group's books.

- Recruits wealthy and respectable professionals through a web of consulting groups that typically hide their ties to Scientology.

The founder of this enterprise was part storyteller, part flimflam man. Born in Nebraska in 1911, Hubbard served in the Navy during World War II and soon afterward complained to the Veterans Administration about his "suicidal inclinations" and his "seriously affected" mind. Nevertheless, Hubbard was a moderately successful writer of pulp science fiction. Years later, church brochures described him falsely as an "extensively decorated" World War II hero who was crippled and blinded in action, twice pronounced dead and miraculously cured through Scientology. Hubbard's "doctorate" from "Sequoia University" was a fake mail-order degree. In a 1984 case in which the church sued a Hubbard biographical researcher, a California judge concluded that its founder was "a pathological liar."

Hubbard wrote one of Scientology's sacred texts, *Dianetics: The Modern Science of Mental Health*, in 1950. In it he introduced a crude psychotherapeutic technique he called "auditing." He also created a simplified lie detector (called an "E-meter") that was designed to measure electrical changes in the skin while subjects discussed intimate details of their past. Hubbard argued that unhappiness sprang from mental aberrations (or "engrams") caused by early traumas. Counseling sessions with the E-meter, he claimed, could knock out the engrams, cure blindness and even improve a person's intelligence and appearance.

Hubbard kept adding steps, each more costly, for his followers to climb. In the 1960s the guru decreed that humans are made of clusters of spirits (or "thetans") who were banished to earth some 75 million years ago by a cruel galactic ruler named Xenu. Naturally, those thetans had to be audited.

An Internal Revenue Service ruling in 1967 stripped Scientology's mother church of its tax-exempt status. A federal court ruled in 1971 that Hubbard's medical claims were bogus and that E-meter auditing could no longer be called a scientific treatment. Hubbard responded by going fully religious, seeking First Amendment protection for Scientology's strange rites. His counselors started sporting clerical collars. Chapels were built, franchises became "missions," fees became "fixed donations," and Hubbard's comic-book cosmology became "sacred scriptures."

During the early 1970s, the IRS conducted its own auditing sessions and proved that Hubbard was skimming millions of dollars from the church, laundering the money through dummy corporations in Panama and stashing it in Swiss bank accounts. Moreover, church members stole IRS documents, filed false tax returns and harassed the agency's employees. By late 1985, with high-level defectors accusing Hubbard of having stolen as much as \$200 million from the church, the IRS was seeking an indictment of Hubbard for tax fraud. Scientology members "worked day and night" shredding documents the IRS sought, according to defector Aznaran, who took part in the scheme. Hubbard, who had been in hiding for five years, died before the criminal case could be prosecuted.

Today the church invents



THE LOTTICKS LOST THEIR SON, Noah, who jumped from a Manhattan hotel clutching \$171, virtually the only money he had not yet turned over to Scientology. His parents blame the church and would like to sue but are frightened by the organization's reputation for ruthlessness.

THE BRIDGE TO ENLIGHTENMENT

"Flowing up the Bridge" from Personality Test to O.T. 8 will cost the average person an estimated \$200,000 to \$400,000. The steps shown are only a sample of the many courses and treatments available. Also offered: expensive books, tapes, E-meters (for auditing members), alarm clocks, polo shirts, tote bags, stained-glass windows and ceramic mugs, among many other items.

Personality Test

Cost: **Free**

Time required: an hour

A true-false-maybe test to determine whether you need Scientology. Everyone does.

Communications Courses

Cost: **\$250 each**

Time required: a few weeks

Several courses entail repetitive exercises (sitting on a chair for hours without twitching, speaking to people without displaying emotion) that help pacify and indoctrinate the customer.

Regular Auditing, Grades 0-4

Cost: **\$500 an hour**

Time required: indefinite

At graduation, you should be able to communicate effectively, make problems vanish and attain freedom from the guilt of past misdeeds and many psychosomatic ills.

New Era Dianetics

Cost: **\$500 an hour**

Time required: indefinite

Auditing your life (and prior lives) to locate evil intentions and traumatic experiences that left you with psychosomatic ills. At graduation, you have attained the state of "clear."

THE CURRENT LEADER

Obsessed with security, church boss David Miscavige reportedly likes to shoot photos of perceived enemies with a .45 automatic.



costly new services with all the zeal of its founder. Scientology doctrine warns that even adherents who are "cleared" of engrams face grave spiritual dangers unless they are pushed to higher and more expensive levels. According to the church's latest price list, recruits—"raw meat," as Hubbard called them—take auditing sessions that cost as much as \$1,000 an hour, or \$12,500 for a 12½-hour "intensive."

Psychiatrists say these sessions can produce a drugged-like, mind-controlled euphoria that keeps customers coming back for more. To pay their fees, newcomers can earn commissions by recruiting new members, become auditors themselves (Miscavige did so at age 12), or join the church staff and receive free counseling in exchange for what their written contracts describe as a "billion years" of labor. "Make sure that lots of bodies move through the shop," implored Hubbard in one of his bulletins to officials. "Make money. Make more money. Make others produce so as to make money . . . However you get them in or why, just do it."

Harriet Baker learned the hard way about Scientology's business of selling religion. When Baker, 73, lost her husband to cancer, a Scientologist turned up at her Los Angeles home peddling a \$1,300 auditing package to cure her grief. Some \$15,000 later, the Scientologists discovered that her house was debt free. They arranged a \$45,000 mortgage, which they pressured her to tap for more auditing until Baker's children helped their mother snap out of her daze. Last June, Baker demanded a \$27,000 refund for unused

services, prompting two cult members to show up at her door unannounced with an E-meter to interrogate her. Baker never got the money and, financially strapped, was forced to sell her house in September.

Before Noah Lottick killed himself, he had paid more than \$5,000 for church counseling. His behavior had also become strange. He once remarked to his parents that his Scientology mentors could actually read minds. When his father suffered a major heart attack, Noah insisted that it was purely psychosomatic. Five days before he jumped, Noah burst into his parents' home and demanded to know why they were spreading "false rumors" about him—a delusion that finally prompted his father to call a psychiatrist.

It was too late. "From Noah's friends at Dianetics" read the card that accompanied a bouquet of flowers at Lottick's funeral. Yet no Scientology staff members bothered to show up. A week earlier, local church officials had given Lottick's parents a red-carpet tour of their center. A cult leader told Noah's parents that their son had been at the church just hours before he disappeared—but the church denied this story as soon as the body was identified. True to form, the cult even haggled with the Lotticks over \$3,000 their son had paid for services he never used, insisting that Noah had intended it as a "donation."

The church has invented hundreds of goods and services for which members are urged to give "donations." Are you having trouble "moving swiftly up the Bridge"—

that is, advancing up the stepladder of enlightenment? Then you can have your case reviewed for a mere \$1,250 "donation." Want to know "why a thetan hangs on to the physical universe?" Try 52 of Hubbard's tape-recorded speeches from 1952, titled "Ron's Philadelphia Doctorate Course Lectures," for \$2,525. Next: nine other series of the same sort. For the collector, gold-and-leather-bound editions of 22 of Hubbard's books (and bookends) on subjects ranging from Scientology ethics to radiation can be had for just \$1,900.

To gain influence and lure richer, more sophisticated followers, Scientology has lately resorted to a wide array of front groups and financial scams. Among them:

CONSULTING. Sterling Management Systems, formed in 1983, has been ranked in recent years by *Inc.* magazine as one of America's fastest-growing private companies (estimated 1988 revenues: \$20 million). Sterling regularly mails a free newsletter to more than 300,000 health-care professionals, mostly dentists, promising to increase their incomes dramatically. The firm offers seminars and courses that typically cost \$10,000. But Sterling's true aim is to hook customers for Scientology. "The church has a rotten product, so they package it as something else," says Peter Georgiades, a Pittsburgh attorney who represents Sterling victims. "It's a kind of bait and switch." Sterling's founder, dentist Gregory Hughes, is now under investigation by California's Board of Dental Examiners for incompetence. Nine lawsuits are pending against him for malpractice (seven

Clear Certainty Rundown

Cost: **\$2,800**

Time required: 5 hours

This course ascertains whether you are truly clear. If you are, you get the Sunshine Rundown, in which you are walked around town to reacquire yourself with the world.

O.T.* 1-2

Cost: **\$7,978**

Time required: up to 100 hours

After learning how your perceptions of the world and of people have changed since going clear, you are taught about the ideas that were implanted in man more than 75 million years ago.

*O.T. means Operating Thetan, a being at an advanced stage of clear.

O.T. 3-4

Cost: **\$17,010**

Time required: several months

Scientology's "sacred scriptures": the story about the galactic ruler Xenu, the volcanic explosions on earth and the implantations of the spirits (body thetans). This level also helps free you from the effects of drugs taken in past lives.

O.T. 5-7

Cost: **\$25,600**

Time required: several months

Finds and releases body thetans (B.T.s), or negative spiritual beings, that have been asleep or unconscious inside you for millions of years. In his later days, Hubbard could be heard screaming at his B.T.s.

O.T. 8

Cost: **\$11,140, plus accommodations**

Time required: a few weeks

The ultimate answer to everything. There are no known defectors from O.T. 8, which is offered only aboard Scientology's yacht, but the "answer" is rumored to be that Hubbard is God. O.T. 9 texts are said to be written but not released.

WHAT THEY THINK

"It [Scientology] just contains the secrets of the universe. That may be hard for people to handle sometimes, hearing that."

—John Travolta

"It's not hocus-pocus ... If you can erase engrams, then you can get better."

—Kirstie Alley



L. RON HUBBARD SPEAKS

"In all the broad universe, there is no other hope for man than ourselves. This is a tremendous responsibility. I have borne it too long alone. You share it with me now."

"The law can be used very easily to harass, and enough harassment on somebody who is simply on the thin edge anyway ... will generally be sufficient to cause his professional decrease. If possible, of course, ruin him utterly."

"All men are your slaves."

"Don't ever tamely submit to an investigation of us. Make it rough, rough on attackers all the way."

others have been settled), mostly for orthodontic work on children.

Many dentists who have unwittingly been drawn into the cult are filing or threatening lawsuits as well. Dentist Robert Geary of Medina, Ohio, who entered a Sterling seminar in 1988, endured "the most extreme high-pressure sales tactics I have ever faced." Sterling officials told Geary, 45, that their firm was not linked to Scientology, he says. But Geary claims they eventually convinced him that he and his wife Dorothy had personal problems that required auditing. Over five months, the Gearys say, they spent \$130,000 for services, plus \$50,000 for "gold-embossed, investment-grade" books signed by Hubbard. Geary contends that Scientologists not only called his bank to increase his credit-card limit but also forged his signature on a \$20,000 loan application. "It was insane," he recalls. "I couldn't even get an accounting from them of what I was paying for." At one point, the Gearys claim, Scientologists held Dorothy hostage for two weeks in a mountain cabin, after which she was hospitalized for a nervous breakdown.

Last October, Sterling broke some bad news to another dentist, Glover Rowe of Gadsden, Ala., and his wife Dee. Tests showed that unless they signed up for auditing,

Glover's practice would fail, and Dee would someday abuse their child. The next month the Rowes flew to Glendale, Calif., where they shuttled daily from a local hotel to a Dianetics center. "We thought they were brilliant people because they seemed to know so much about us," recalls Dee. "Then we realized our hotel room must have been bugged." After bolting from the center, \$23,000 poorer, the Rowes say, they were chased repeatedly by Scientologists on foot and in cars. Dentists aren't the only ones at risk. Scientology also makes pitches to chiropractors, podiatrists and veterinarians.



HARRIET BAKER, 73, LOST HER HOUSE after Scientologists learned it was debt free and arranged a \$45,000 mortgage, which they pressured her to tap to pay for auditing. They had approached her after her husband died to help "cure" her grief. When she couldn't repay the mortgage, she had to sell.

PUBLIC INFLUENCE. One front, the Way to Happiness Foundation, has distributed to children in thousands of the nation's public schools more than 3.5 million copies of a booklet Hubbard wrote on morality. The church calls the scheme "the largest dissemination project in Scientology history." Applied Scholastics is the name of still another front, which is attempting to install a Hubbard tutorial program in public schools, primarily those populated by minorities. The group also plans a 1,000-acre campus, where it will train educators to teach various Hubbard methods. The disingenuously named Citizens Commission on Human Rights is a Scientology group at war with psychiatry, its primary competitor. The commission typically issues reports aimed at discrediting particular psychiatrists and the field in general. The CCHR is also behind an all-out war against Eli Lilly, the maker of Prozac, the nation's top-selling anti-depression drug. Despite scant evidence, the group's members—who call themselves "psychbusters"—claim that Prozac drives people to murder or suicide. Through mass mailings, appearances on talk shows and heavy lobbying, CCHR has hurt drug sales and helped spark dozens of lawsuits against Lilly.

Another Scientology-linked group, the Concerned

Special Report

Businessmen's Association of America, holds antidrug contests and awards \$5,000 grants to schools as a way to recruit students and curry favor with education officials. West Virginia Senator John D. Rockefeller IV unwittingly commended the CBAA in 1987 on the Senate floor. Last August author Alex Haley was the keynote speaker at its annual awards banquet in Los Angeles. Says Haley: "I didn't know much about that group going in. I'm a

Methodist." Ignorance about Scientology can be embarrassing: two months ago, Illinois Governor Jim Edgar, noting that Scientology's founder "has solved the aberrations of the human mind," proclaimed March 13 "L. Ron Hubbard Day." He rescinded the proclamation in late March, once he learned who Hubbard really was.

HEALTH CARE. HealthMed, a chain of clinics run by Scientologists, promotes a gruel-

ing and excessive system of saunas, exercise and vitamins designed by Hubbard to purify the body. Experts denounce the regime as quackery and potentially harmful, yet HealthMed solicits unions and public agencies for contracts. The chain is plugged heavily in a new book, *Diet for a Poisoned Planet*, by journalist David Steinman, who concludes that scores of common foods (among them: peanuts, bluefish, peaches and cottage cheese) are dangerous.

Mining Money in Vancouver

One source of funds for the Los Angeles-based church is the notorious, self-regulated stock exchange in Vancouver, British Columbia, often called the scam capital of the world. The exchange's 2,300 penny-stock listings account for \$4 billion in annual trading. Local journalists and insiders claim the vast majority range from total washouts to outright frauds.

Two Scientologists who operate there are Kenneth Gerbino and Michael Baybak, 20-year church veterans from Beverly Hills who are major donors to the cult. Gerbino, 45, is a money manager, marketmaker and publisher of a national financial newsletter. He has boasted in Scientology journals that he owes all his stock-picking success to L. Ron Hubbard. That's not saying much: Gerbino's newsletter picks since 1985 have cumulatively returned 24%, while the Dow Jones industrial average has more than doubled. Nevertheless Gerbino's short-term gains can be stupendous. A survey last October found Gerbino to be the only manager who made money in the third quarter of 1990, thanks to gold and other resource stocks. For the first quarter of 1991, Gerbino was dead last. Baybak, 49, who runs a public relations company staffed with Scientologists, apparently has no ethics problem with engineering a hostile takeover of a firm he is hired to promote.

Neither man agreed to be interviewed for this story, yet both threatened legal action through attorneys. "What these guys do is take over companies, hype the stock, sell their shares, and then there's nothing left," says John Campbell, a former securities lawyer who was a director of mining company Athena Gold until Baybak and Gerbino took it over.

The pattern has become familiar. The pair promoted a mining venture called Skylark Resources, whose stock traded at nearly \$4 a share in 1987. The outfit soon crashed, and the stock is around 2¢. NETI Technologies, a software company, was trumpeted in the press as "the next Xerox" and in 1984 rose to a market value of \$120 million with Baybak's help. The company, which later collapsed, was delisted two months ago by the Vancouver exchange.

Baybak appeared in 1989 at the helm of Wall Street Ventures, a start-up that announced it owned 35 tons of rare Middle Eastern postage stamps—worth \$100 million—and was buying the world's largest collection of southern Arabian

stamps (worth \$350 million). Steven C. Rockefeller Jr. of the oil family and former hockey star Denis Potvin joined the company in top posts, but both say they quit when they realized the stamps were virtually worthless. "The stamps were created by sand-dune nations to exploit collectors," says Michael Laurence, editor of *Linn's Stamp News*, America's largest stamp journal. After the stock topped \$6, it began a steady descent, with Baybak unloading his shares along the way. Today it trades at 18¢.

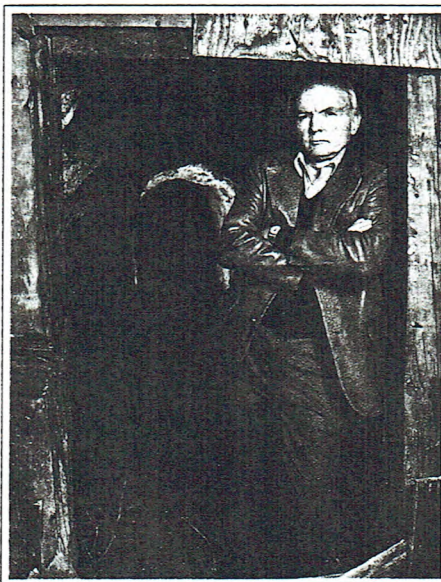
Athena Gold, the current object of Baybak's and Gerbino's attentions, was founded by entrepreneur William Jordan. He turned to an established Vancouver broker in 1987 to help finance the company, a 4,500-acre mining property near Reno. The broker promised to raise more than \$3 million and soon brought Baybak and Gerbino into the deal. Jordan never got most of the money, but the cult members ended up with a good deal of cheap stock and options. Next they elected directors who were friendly to them and set in motion a series of complex maneuvers to block Jordan from voting stock he controlled and to run him out of the company. "I've been an honest policeman all my life and I've seen the worst kinds of crimes, and this ranks high," says former Athena shareholder Thomas Clark, a 20-year veteran of Reno's police force who has teamed up with Jordan to try to get the gold mine back. "They stole this man's property."

With Baybak as chairman, the two Scientologists and their staffs are promoting Athena, not always accurately.

A letter to shareholders with the 1990 annual report claims Placer Dome, one of America's largest gold-mining firms, has committed at least \$25.5 million to develop the mine. That's news to Placer Dome. "There is no pre-commitment," says Placer executive Cole McFarland. "We're not going to spend that money unless survey results justify the expenditure."

Baybak's firm represented Western Resource Technologies, a Houston oil-and-gas company, but got the boot in October. Laughs Steven McGuire, president of Western Resource: "His is a p.r. firm in need of a p.r. firm." But McGuire cannot laugh too freely. Baybak and other Scientologists, including the estate of L. Ron Hubbard, still control huge blocks of his company's stock.

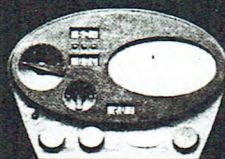
—By Richard Behar



ATHENA GOLD'S WILLIAM JORDAN
Cult members got cheap stock, then ran him out of the company



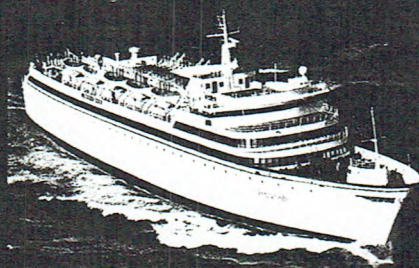
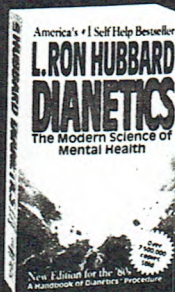
**Church of Scientology
International headquarters,
Los Angeles**



E-meter: \$4,375

Can you revive
your goals?

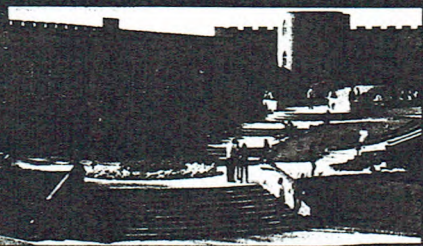
One of the heaviest TV
advertising campaigns in the
publishing industry pushes
the 40-year-old *Dianetics*, the
cult's basic sacred text



The Freewinds: high-level enlightenment



**Celebrity Center International in Hollywood
is one of several church clubhouses that
cater to stars**



Scientology's college in Sussex, England

verts and credibility, is coupled with a radio and TV advertising campaign virtually unparalleled in the book industry.

Scientology devotes vast resources to squelching its critics. Since 1986 Hubbard and his church have been the subject of four unfriendly books, all released by small yet courageous publishers. In each case, the writers have been badgered and heavily sued. One of Hubbard's policies was that all perceived enemies are "fair game" and subject to being "tricked, sued or lied to or destroyed." Those who criticize the church—journalists, doctors, lawyers and even judges—often find themselves engulfed in litigation, stalked by private eyes, framed for fictional crimes, beaten up or threatened with death. Psychologist Margaret Singer, 69, an outspoken Scientology critic and professor at the University of California, Berkeley, now travels regularly under an assumed name to avoid harassment.

After the Los Angeles Times published a negative series on the church last summer, Scientologists spent an estimated \$1 million to plaster the reporters' names on hundreds of billboards and bus placards across the city. Above their names were quotations taken out of context to portray the church in a positive light.

The church's most fearsome advocates are its lawyers. Hubbard warned his followers in writing to "beware of attorneys who tell you not to sue . . . the purpose of the suit is to harass and discourage rather than to win." Result: Scientology has brought hundreds of suits against its perceived enemies and today pays an estimated \$20 million annually to more than 100 lawyers.

One legal goal of Scientology is to bankrupt the opposition or bury it under

paper. The church has 71 active lawsuits against the IRS alone. One of them, *Miscavige vs. IRS*, has required the U.S. to produce an index of 52,000 pages of documents. Boston attorney Michael Flynn, who helped Scientology victims from 1979 to 1987, personally endured 14 frivolous lawsuits, all of them dismissed. Another lawyer, Joseph Yanny, believes the church "has so subverted justice and the judicial system that it should be barred from seeking equity in any court." He should know: Yanny represented the cult until 1987, when, he says, he was asked to help church officials steal medical records to blackmail an opposing attorney (who was allegedly beaten up instead). Since Yanny quit representing the church, he has been the target of death threats, burglaries, lawsuits and other harassment.

Scientology's critics contend that the U.S. needs to crack down on the church in a major, organized way. "I want to know, Where is our government?" demands Toby Plevin, a Los Angeles attorney who handles victims. "It shouldn't be left to private litigators, because God knows most of us are afraid to get involved." But law-enforcement agents are also wary. "Every investigator is very cautious, walking on eggshells when it comes to the church," says a Florida police detective who has tracked the cult since 1988. "It will take a federal effort with lots of money and manpower."

So far the agency giving Scientology the most grief is the IRS, whose officials have implied that Hubbard's successors may be looting the church's coffers. Since 1988, when the U.S. Supreme Court upheld the

revocation of the cult's tax-exempt status, a massive IRS probe of church centers across the country has been under way. An IRS agent, Marcus Owens, has estimated that thousands of IRS employees have been involved. Another agent, in an internal IRS memorandum, spoke hopefully of the "ultimate disintegration" of the church. A small but helpful beacon shone last June when a federal appeals court ruled that two cassette tapes featuring conversations between church officials and their lawyers are evidence of a plan to commit "future frauds" against the IRS.

The IRS and FBI have been debriefing Scientology defectors for the past three years, in part to gain evidence for a major racketeering case that appears to have stalled last summer. Federal agents complain that the Justice Department is unwilling to spend the money needed to endure a drawn-out war with Scientology or to fend off the cult's notorious jihads against individual agents. "In my opinion the church has one of the most effective intelligence operations in the U.S., rivaling even that of the FBI," says Ted Gunderson, a former head of the FBI's Los Angeles office.

Foreign governments have been moving even more vigorously against the organization. In Canada the church and nine of its members will be tried in June on charges of stealing government documents (many of them retrieved in an enormous police raid of the church's Toronto headquarters). Scientology proposed to give \$1 million to the needy if the case was dropped, but Canada spurned the offer. Since 1986 authorities in France, Spain and Italy have raided more than 50 Scientology centers. Pending charges against

more than 100 of its overseas church members include fraud, extortion, capital flight, coercion, illegally practicing medicine and taking advantage of mentally incapacitated people. In Germany last month, leading politicians accused the cult of trying to infiltrate a major party as well as launching an immense recruitment drive in the east.

Sometimes even the church's biggest zealots can use a little protection. Screen star Travolta, 37, has long served as an unofficial Scientology spokesman, even though he told a magazine in 1983 that he was opposed to the church's management. High-level defectors claim that Travolta has long feared that if he defected, details of his sexual life would be made public. "He felt pretty intimidated about this getting out and told me so," recalls William Franks, the church's former chairman of the board. "There were no outright threats made, but it was implicit. If you leave, they immediately start digging up everything." Franks was driven out in 1981 after attempting to reform the church.

The church's former head of security, Richard Aznaran, recalls Scientology ringleader Miscavige repeatedly joking to staffers about Travolta's allegedly promiscuous homosexual behavior. At this point any threat to expose Travolta seems superfluous: last May a male porn star collected \$100,000 from a tabloid for an account of his alleged two-year liaison with the celebrity. Travolta refuses to comment, and in December his lawyer dismissed questions about the subject as "bizarre." Two weeks later, Travolta announced that he was getting married to actress Kelly Preston, a fellow Scientologist.

Shortly after Hubbard's death the church retained Trout & Ries, a respected, Connecticut-based firm of marketing consultants, to help boost its public image. "We were brutally honest," says Jack Trout. "We advised them to clean up their act, stop with the controversy and even to stop being a church. They didn't want to hear that." Instead, Scientology hired one of the country's largest p.r. outfits, Hill and Knowlton, whose executives refuse to discuss the lucrative relationship. "Hill and Knowlton must feel that these guys are not totally off the wall," says Trout. "Unless it's just for the money."

One of Scientology's main strategies is to keep advancing the tired argument that the church is being "persecuted" by anti-religionists. It is supported in that position by the American Civil Liberties Union and the National Council of Churches. But in the end, money is what Scientology is all about. As long as the organization's opponents and victims are successfully squelched, Scientology's managers and lawyers will keep pocketing millions of dollars by helping it achieve its ends. ■

The Scientologists and Me

Strange things seem to happen to people who write about Scientology. Journalist Paulette Cooper wrote a critical book on the cult in 1971. This led to a Scientology plot (called Operation Freak-Out) whose goal, according to church documents, was "to get P.C. incarcerated in a mental institution or jail." It almost worked: by impersonating Cooper, Scientologists got her indicted in 1973 for threatening to bomb the church. Cooper, who also endured 19 lawsuits by the church, was finally exonerated in 1977 after FBI raids on the church offices in Los Angeles and Washington uncovered documents from the bomb scheme. No Scientologists were ever tried in the matter.

For the *TIME* story, at least 10 attorneys and six private detectives were unleashed by Scientology and its followers in an effort to threaten, harass and discredit me. Last Oct. 12, not long after I began this assignment, I planned to lunch with Eugene Ingram, the church's leading private eye and a former cop. Ingram, who was tossed off the Los Angeles police force in 1981 for alleged ties to prostitutes and drug dealers, had told me that he might be able to arrange a meeting with church boss David Miscavige. Just hours before the lunch, the church's "national trial counsel," Earle Cooley, called to inform me that I would be eating alone.



Church attorney Cooley

Alone, perhaps, but not forgotten. By day's end, I later learned, a copy of my personal credit report—with detailed information about my bank accounts, home mortgage, credit-card payments, home address and Social Security number—had been illegally retrieved from a national credit bureau called Trans Union. The sham company that received it, "Educational Funding Services" of Los Angeles, gave as its address a mail drop a few blocks from Scientology's headquarters.

The owner of the mail drop is a private eye named Fred Wolfson, who admits that an Ingram associate retained him to retrieve credit reports on several individuals. Wolfson says he was told that Scientology's attorneys "had judgments against these people and were trying to collect on them." He says now, "These are vicious people. These are vipers." Ingram, through a lawyer, denies any involvement in the scam.

During the past five months, private investigators have been contacting acquaintances of mine, ranging from neighbors to a former colleague, to inquire about subjects such as my health (like my credit rating, it's excellent) and whether I've ever had trouble with the IRS (unlike Scientology, I haven't). One neighbor was greeted at dawn outside my Manhattan apartment building by two men who wanted to know whether I lived there. I finally called Cooley to demand that Scientology stop the nonsense. He promised to look into it.

After that, however, an attorney subpoenaed me, while another falsely suggested that I might own shares in a company I was reporting about that had been taken over by Scientologists (he also threatened to contact the Securities and Exchange Commission). A close friend in Los Angeles received a disturbing telephone call from a Scientology staff member seeking data about me—an indication that the cult may have illegally obtained my personal phone records. Two detectives contacted me, posing as a friend and a relative of a so-called cult victim, to elicit negative statements from me about Scientology. Some of my conversations with them were taped, transcribed and presented by the church in affidavits to *TIME*'s lawyers as "proof" of my bias against Scientology.

Among the comments I made to one of the detectives, who represented himself as "Harry Baxter," a friend of the victim's family, was that "the church trains people to lie." Baxter and his colleagues are hardly in a position to dispute that observation. His real name is Barry Silvers, and he is a former investigator for the Justice Department's Organized Crime Strike Force.

—By Richard Behar

FILED

OCT. 10, 1995

KEENAN G. CASAL, Clerk
U.S. BANKRUPTCY COURT-SANTA ROSE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re

GERALD ARMSTRONG,

No. 95-10911

Debtor.

CHURCH OF SCIENTOLOGY
INTERNATIONAL,

Plaintiff,

v.

A.P. No. 95-1164

GERALD ARMSTRONG,

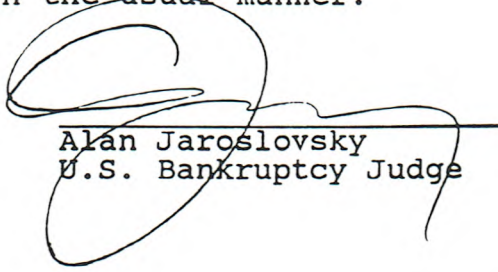
Defendant.

ORDER REGARDING TRIAL TESTIMONY

It appearing necessary to an effective trial of this adversary proceeding, it is

ORDERED that all direct testimony at the trial shall be in the form of declarations. The declarations shall be filed with the court and a copy mailed to the other side at least seven days before trial. Each declarant shall be present in court at trial to be cross-examined. No exhibits or other papers of any kind may be attached to the declarations; all exhibits will be made part of the record only by motion at trial in the usual manner.

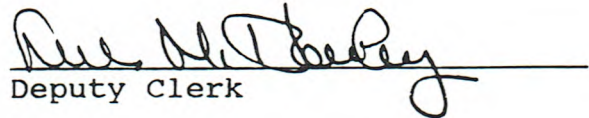
Dated: October 8, 1995


Alan Jaroslovsky
U.S. Bankruptcy Judge

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the Northern District of California hereby certifies that a copy of the attached document was mailed to all parties listed below as required by the Bankruptcy Code and Rules of Bankruptcy Procedure.

Dated: October 10, 1995


Deputy Clerk

GERALD ARMSTRONG
715 Sir Francis Drake Boulevard
San Anselmo, CA 94960

WILSON, RYAN & CAMPILONGO
Andrew H. Wilson
115 Sansome Street
Fourth Floor
San Francisco, CA 94104

MOXON & BARTILSON
Laurie J. Bartilson
6255 Sunset Blvd., Suite 2000
Hollywood, CA 90028

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Gerald Armstrong
715 Sir Francis Drake Boulevard
San Anselmo, CA 94960
(415)456-8450
In Propria Persona

ORIGINAL FILED
ORDER FOR RELIEF

95 SEP 25 PM 4:01

KEENAN, J. CLERK
U.S. BANKRUPTCY COURT
NORTHERN DIST. OF CA.
SANTA ROSA, CA.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

GERALD ARMSTRONG,

Debtor

CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California non-
profit religious corporation,

Plaintiff,

v.

GERALD ARMSTRONG,

Defendant.

) Case No. 95-10911 aj

) Chapter 7

) Adv. No. 95-1164

) GERALD ARMSTRONG'S
) SECOND AMENDED ANSWER

INTRODUCTION

Plaintiff Scientology organization has been judicially declared paranoid and schizophrenic. Scientology's paranoia and schizophrenia are a reflection of its founder L. Ron Hubbard. Hubbard was judicially declared to be a pathological liar, greedy, lustful of power, vindictive, and aggressive against persons he perceived as disloyal or hostile. Out of his paranoia and schizophrenia, Hubbard concocted and adopted a philosophy and practice of opportunistic hatred as his way of dealing with persons so perceived. Out of his paranoia and schizophrenia

1 Hubbard targeted and labelled persons so perceived "suppressive
2 persons," (or "SPs") and "enemies." At a certain point Hubbard
3 called his philosophy and practice of opportunistic hatred, "fair
4 game," and he formed an organization, which he called a "church,"
5 to carry out his "fair game" intentions, plans, programs,
6 operations and orders. He used the resources and personnel of
7 the Scientology organization to carry out antisocial and criminal
8 acts against individuals and groups designated as "enemies."
9 Hubbard's "fair game" policy, which has been several times
10 judicially condemned, states: "ENEMY - SP Order. Fair game. May
11 be deprived of property or injured by any means by any
12 Scientologist without the discipline of the Scientologist. May
13 be tricked, sued or lied to or destroyed." Out of his paranoia
14 and schizophrenia Hubbard further instructed his "church" to use
15 society's legal systems to harass and ruin perceived "SPs" or
16 "enemies." It has been judicially declared that his Scientology
17 organization has a history of violating and abusing its own
18 members' civil rights, and harassing and abusing those persons
19 not in the organization whom it perceives as enemies. It has
20 been judicially declared that the Scientology organization is
21 fully capable of intimidation or other physical or psychological
22 abuse if it suits their ends. Hubbard and Scientology, while
23 knowing that defendant Armstrong was neither an "SP" nor an
24 "enemy," as said terms are used and defined in Scientology's
25 policies, orders and other writings, so labelled him, and
26 subjected him to "fair game" until Hubbard died in 1986.
27 Scientology's new leader David Miscavige has continued its "fair
28 game" doctrine until the present, and his Scientology
organization continues to the present to label and target

1 Armstrong as an "SP," an "enemy," and "fair game." The instant
2 complaint by Scientology is the product of Miscavige's and
3 Scientology's paranoia and schizophrenia manifested in their
4 "fair game" doctrine and attacks. Miscavige and Scientology have
5 known throughout the time period covered by the matters herein of
6 the judicial condemnation of "fair game." Miscavige and
7 Scientology are harassing Armstrong with judicial enforcement of
8 an illegal and evil contract, his signature on which they
9 obtained by extortion, fraud and the abuse of his common decency
10 and trust. From the time of signing of said contract to the
11 present, Miscavige and Scientology have subjected Armstrong to a
12 campaign of covert and overt character assassination (which
13 Scientology calls "black propaganda"), stalking, threat, lies and
14 litigation. Scientology has a reputation in its legal affairs
15 for dirty tricks, threat, dishonesty, deception, attrition and
16 overwhelm which is widely known and feared by this country's
17 attorneys and by the media. Scientology also has a widely known
18 reputation for using bullying and dishonest private investigators
19 to harass perceived opponents pursuant to "fair game" and for
20 shielding their aggressive and corrupt activities behind the work
21 product privilege of corrupt attorneys. All of Armstrong's
22 actions which Scientology claims are breaches of its "contract"
23 were in logical, legal response to Miscavige's and Scientology's
24 dangerous and damaging "fair game" activities. Armstrong's
25 actions have all been justified and privileged, and Scientology
26 has not been damaged in any way by his actions. The instant
27 complaint is one part of Miscavige's and Scientology's program to
28 misuse the legal system to harass and ruin Armstrong.

Miscavige's and Scientology's misuse of the legal system is one

1 front in their war on Armstrong, the purpose of which is his
2 demise. This is not a purpose for which the legal system and the
3 nation's courts may be used.

4 For the fleeting illusion of power and wealth Hubbard sold
5 his soul to the world's dark force of evil. Out of his paranoia
6 and schizophrenia Hubbard considered himself anti-Christ and
7 devised an anti-Christian philosophy and organization to achieve
8 his anti-Christian goals of world power and wealth. Armstrong is
9 a Christian. Armstrong believes he has been called by God to
10 bring His Light to Scientology's benighted and enslaved souls.
11 Armstrong believes his experiences are God's and that he cannot
12 be silenced by man's courts concerning his experiences or about
13 Scientology's dark, secret and anti-Christian nature. Armstrong
14 believes that Scientology is dangerous to himself, others, to
15 wisdom, and to goodness itself, and that Scientology's
16 dangerousness is reduced by bringing its dark, secret and anti-
17 Christian nature to light, and by not succumbing to the threat
18 and of its evil "fair game" doctrine.

19 HISTORY

20 Armstrong was in Scientology from 1969 through 1981.
21 Throughout those years he believed Hubbard's and Scientology's
22 public representations about their history, credentials,
23 research, and benevolent intentions. Armstrong accepted
24 Hubbard's and Scientology's guarantees of higher intelligence,
25 greater freedom, increased abilities and elevated ethics that
26 they made for their psychological processing, or "auditing."
27 Armstrong gave Hubbard and Scientology his allegiance, support
28 and life, which Hubbard and Scientology, out of their paranoia
and schizophrenia, systematically and callously abused.

1 From 1971 through 1981 Armstrong was in the Sea
2 Organization, one of the two administration and power arms
3 through which Hubbard controlled Scientology around the world.
4 The other power arm of Scientology that Hubbard used to maintain
5 control was the Guardian's Office, headed by his wife Mary Sue
6 Hubbard. Armstrong worked with Hubbard for four years on his
7 ship, the "Apollo," and held the positions of public relations
8 officer, legal officer and intelligence officer. Armstrong later
9 was in charge of Hubbard's telex and mail traffic at a base in
10 Florida, and then Hubbard's household staff at a base in southern
11 California. Throughout his Sea Org experience Armstrong gained a
12 knowledge of organization structure, function, control, finances,
13 personnel, policies and operations. During 1980 and 1981
14 Armstrong assembled an archive of Hubbard's personal records,
15 correspondence and writings of all kinds, and did the research
16 for a Hubbard biography. Armstrong provided Hubbard's personal
17 archive materials to non-Scientologist writer Omar V. Garrison
18 who had been contracted to write the biography.

19 Through his study of Hubbard's archive, and the
20 integration of his knowledge and experiences gained throughout
21 his years in Scientology, Armstrong discovered and documented the
22 fact that Hubbard and Scientology had systematically and
23 callously lied in their public representations about their
24 history, credentials, research, benevolent intentions, and
25 guarantees for auditing. Armstrong discovered and documented the
26 facts that Hubbard claimed to be a civil engineer and nuclear
27 physicist who excelled in his university education; yet he had
28 actually failed his few courses in physics and dropped out of
 university without completing his second year. Armstrong

1 discovered and documented the facts that Hubbard claimed that it
2 was a matter of medical record that he had twice been pronounced
3 dead; yet no such incidents had happened beyond Hubbard's
4 admitted nitrous oxide hallucination of his death during a tooth
5 extraction. Armstrong discovered and documented the facts that
6 Hubbard claimed that his naval service was glorious, that he had
7 been crippled and blinded in action, and that he had cured
8 himself at the war's end of his battle wounds with his new mental
9 technology "Dianetics;" yet Hubbard's naval career was something
10 different from glorious, he was not crippled nor blinded in
11 action, he feigned his medical conditions to get out of the
12 service and to obtain a disability pension, and, decades after he
13 claimed to have cured himself and, to everyone's amazement, have
14 been given a perfect score on a mental and physical tests, he
15 continued to draw a disability pension for his feigned injuries.

16
17 Armstrong discovered that Hubbard lied about his family,
18 including falsely denying his bigamous second marriage and the
19 paternity of his second daughter. Armstrong discovered that
20 Hubbard, while claiming to have been sent by the US Navy into a
21 black magic ring to break it up, had actually been a participant
22 in the black magic cult and its rituals, including a blood
23 ritual. Armstrong discovered that Hubbard, while claiming to
24 have based and developed Scientology on his pure scientific
25 research, had actually based and developed it on his decision
26 for, and use of, neo-satanic power, for which he had joined the
27 black magic cult, then headed by the "great beast," Aleister
28 Crowley.

Armstrong discovered that Hubbard's claims of altruistic

1 and benevolent motives, that, e.g., he, his philosophy and
2 organization were working to free mankind, were false. When
3 starting Dianetics and Scientology Hubbard programmed himself
4 with the command that all men were his slaves, and through the
5 ensuing years treated them as such. Armstrong discovered that
6 Hubbard was greedy, lustful of power, vindictive, and aggressive
7 against persons he perceived as disloyal or hostile. Armstrong
8 discovered that contrary to Hubbard's and Scientology's
9 assertions that Hubbard received no money from Scientology and
10 was paid less than an average staff member, Hubbard had control
11 of all Scientology monies and bank accounts and had unilaterally
12 transferred many millions of dollars to his own accounts.

13 Armstrong discovered that Hubbard's and Scientology's system
14 of "ethics" and "justice" procedures, were neither ethical nor
15 just, but was really a kangaroo court system which served
16 Hubbard's purposes of maintaining ironfisted, dictatorial
17 control, obliterating any criticism, and keeping staff members
18 and Scientologists in fear and suppressed. Armstrong discovered
19 that Hubbard's promise of an increase in intelligence quotient of
20 one point per hour of auditing was false (Armstrong had by then
21 had over one thousand hours) and that in fact the further one
22 went on in Scientology the less intelligent one became.

23 Armstrong discovered that contrary to Hubbard's and Scientology's
24 promise of the sanctity and confidentiality of statements made by
25 people being audited, these statements were not kept confidential
26 but could be and were used by Hubbard and Scientology to control
27 and harm the people if it served Hubbard's and Scientology's
28 antisocial purpose.

Armstrong discovered that Hubbard's and Scientology's

1 promise of higher ethical standards as a result of undergoing
2 auditing and adherence to Scientology was false and that auditing
3 and Scientology produced in the adherents who had risen to the
4 apex of its organizational pyramid dishonesty, stupidity,
5 antisocialness and aggressiveness. Armstrong discovered that
6 contrary to Hubbard's and Scientology's assertion that auditing
7 and other Scientology practices kept families together and
8 improved marital relations, in fact they turned parents and their
9 children against each other and broke families apart. Armstrong
10 discovered that contrary to Hubbard's and Scientology's assertion
11 that auditing made people sane and able, cured diseases such as
12 cancer and guaranteed superior physical health, there was in fact
13 an inordinate number of suicides and psychotic episodes among
14 people who had been audited and all auditees were generally
15 delusional. Scientologists were as sick and died of cancer and
16 other diseases as readily as anyone else, and were generally
17 unhealthy. Armstrong discovered that Hubbard himself was
18 addicted to drugs, in poor physical health, and often
19 pathologically sullen or enraged, and Armstrong knew that Hubbard
20 and Scientology hid these conditions from the world. Armstrong
21 discovered that rather than admitting the damage and failures of
22 auditing Hubbard and Scientology attacked any critics and
23 attacked the persons who had been damaged. Armstrong discovered
24 that Hubbard had relabeled his "psychotherapy" a "religion" to
25 avoid having to make good on his "scientific guarantees."
26 Hubbard called this idea the "religion angle."

27 Armstrong discovered that Hubbard and Scientology
28 consistently lied in judicial proceedings and required that their
adherents lie for them, including lying about Hubbard's control

1 of Scientology, his control of Scientology funds, his control of
2 the Guardian's Office intelligence operations(11 GO staff,
3 including Mary Sue Hubbard, were convicted of Federal crimes and
4 sentenced to prison as a result of an FBI raid on Scientology's
5 intelligence bureaus in 1977) organization structure, the
6 organization's ability to communicate with Hubbard, their
7 intentions, and neo-satanic origins, attitude and practices.
8 Armstrong discovered that Hubbard and Scientology, rather than
9 face the truth about their origins, attitude and practices,
10 sought to subvert the justice system through dirty tricks, lies,
11 threat, deception, attrition and overwhelm.

12 Armstrong discovered that he had been brainwashed by Hubbard
13 and Scientology, and that Scientologists everywhere are subjected
14 to the identical brainwashing. Armstrong discovered that he had
15 been cruelly abused by Hubbard and Scientology, and that
16 Scientologists everywhere are similarly abused. Armstrong
17 discovered that Hubbard and Scientology uses a system of
18 punishment, fear, control of language, control of information,
19 control of environment, time and human contact, electronic-
20 assisted interrogations, imprisonment, and control of thought,
21 which is able to achieve complete dominion over the minds and
22 lives of Scientologists to their detriment. It brings them to
23 support, defend and give their lives to the very spiritless
24 system which hates them and means them harm. Armstrong
25 discovered that the truth concerning Hubbard's and Scientology's
26 origins, history, actual intentions, practices, operations and
27 efficacy was kept from Scientologists, and that anyone who sought
28 to bring that truth to Scientologists was ruthlessly attacked.

When Armstrong sought while inside to have Scientology

1 correct its lies and abuses he was threatened and attacked. He
2 left Scientology and was declared an "SP" and became "fair game."
3 Hubbard's and Scientology's black propaganda "SP Declare" on
4 Armstrong falsely accused him of crimes and lying about Hubbard.
5 Hubbard personally ordered that Armstrong be destroyed.
6 Armstrong contacted Boston attorney Michael J. Flynn. Armstrong
7 obtained documents from Garrison which he thought would be needed
8 to defend himself, and he sent these to Flynn.

9 From 1982 through 1984 Scientology's "fair game" acts toward
10 Armstrong included spying on him and his wife; hiring private
11 investigators to spy on and harass them; having a private
12 investigator assault Armstrong, and another hit him with a car
13 and attempt to involve him in a freeway "accident;" suing him;
14 attempting to have him falsely charged with theft; subjecting him
15 to a black propaganda and stalking campaign. Armstrong filed a
16 cross-complaint against Scientology for fraud and intentional
17 infliction of emotional distress.

18 In 1984, following a thirty day trial in Los Angeles
19 Superior Court, a decision was rendered by Judge Paul G.
20 Breckenridge, Jr. in Armstrong's favor in Scientology's case from
21 which his cross-complaint had been severed. This decision, which
22 was affirmed on appeal in 1991, is attached hereto as Exhibit A.

23 After the 1984 trial through 1986 Scientology's "fair game"
24 acts toward Armstrong included a Scientology private investigator
25 threatening to murder him; filing false contempt of court charges
26 against him; attempting to have the FBI charge him based on false
27 information; attempting to have the Los Angeles District Attorney
28 bring charges against him based on false information; culling and
disseminating his statements made in auditing; paying agents to

1 write false affidavits against him; using his friends to set him
2 up in a covert intelligence operation; illegally videotaping him;
3 attempting to entrap him in commission of a crime; subjecting him
4 to further black propaganda, including international publications
5 falsely accusing Armstrong of crimes against humanity.

6 Scientology also subjected attorney Flynn to years of "fair
7 game," which included suing him or his office more than a dozen
8 times; infiltrating his office; threatening his career and
9 family; paying known criminals for declarations falsely accusing
10 him of crimes; framing him with a crime; attempting his
11 assassination; and subjecting him to an international stalking
12 and black propaganda campaign.

13 In late 1986, out of desperation to get away from the threat
14 of Scientology's "fair game" operations, Flynn agreed with
15 Scientology to a "global settlement" of all of the cases in which
16 he was then involved against the organization, including
17 Armstrong's cross-complaint, then set for trial at the beginning
18 of 1987. Flynn was to be paid a lump sum which he was to divide
19 between his clients and himself. Armstrong agreed to a monetary
20 figure with Flynn to settle his cross-complaint. Scientology and
21 Flynn worked out and agreed to the language of the settlement
22 documents before Armstrong, who was then working for Flynn, was
23 shown any papers. Armstrong was flown from Boston to Los
24 Angeles, and other Flynn clients were flown to Los Angeles for
25 the settlement, before Armstrong saw the documents he was
26 expected to sign, and was told by Flynn that Scientology would
27 not change the documents. Armstrong was broken hearted when he
28 read the settlement documents. He had not been involved in any
negotiations or settlement discussions, and he felt ganged up on.

1 He protested to Flynn that it was impossible to live by the
2 "settlement contract;" that he would not agree to the \$50,000 per
3 statement liquidated damages clause; that the contract was just
4 more "fair game." Flynn stated to Armstrong in response to
5 Armstrong's protest that the settlement contract "isn't worth the
6 paper it's printed on;" that Armstrong couldn't "contract away
7 [his] constitutional rights;" that "it's unenforceable." Flynn
8 pointed out to Armstrong the clauses concerning Armstrong's
9 dismissal of his cross-complaint and his release of Scientology
10 up to that date; and Flynn told Armstrong, "That's what they're
11 paying you for." Flynn said that all of his clients, some twenty
12 people, were depending on Armstrong to sign; that most had
13 already signed and if Armstrong didn't sign everyone would be
14 subjected to more "fair game;" that Scientology had ruined
15 Flynn's marriage and life and he had to get out of the
16 litigation; that Scientology would continue to make Armstrong's
17 life miserable. Flynn said that Scientology had promised to
18 cease all "fair game" attacks on Armstrong and everyone else, and
19 that the purpose of the "settlement contracts" was to give
20 Scientology the opportunity they said they needed to "turn over a
21 new leaf." In order to relieve everyone involved from the threat
22 of "fair game," to give Scientology the opportunity they said
23 they needed to reform, and because of his faith in God, and the
24 confirmation by Flynn that the "contract" was unenforceable,
25 Armstrong did go through the spectacle of a videotaped signing.

26 Following the settlement, and before Armstrong responded in
27 any way, Scientology continued to subject him to "fair game,"
28 including filing affidavits accusing him of crimes and of being
an agent provocateur of the United States government; publishing

1 distorted versions of his Scientology history; using documents
2 which Scientology had requested be sealed in the Armstrong case
3 to attack him; distributing copies of edited versions of the
4 illegal videotapes of Armstrong to the media internationally; and
5 threatening him six times with being sued if he responded to any
6 attacks. Scientology also continued to subject other people to
7 "fair game," in violation of its promise through Flynn that it
8 was ceasing all "fair game" activities.

9 Armstrong attempted to live by the spirit of settlement, and
10 although deeply saddened and threatened by Scientology's
11 continuing attacks had not responded, but had tried to live his
12 life away from the Scientology "fair game" war. Armstrong wrote,
13 drew, had remarkable ideas, and formed The Gerald Armstrong
14 Corporation with wonderful hopes and great expectations. In late
15 1989, however, after a series of threats from Scientology lawyer
16 Lawrence Heller following Armstrong's being served with a
17 deposition subpoena in a case against the organization, Armstrong
18 concluded that he had to do something to defend himself, and to
19 correct what he saw as an obstruction of justice, which the
20 "settlement contracts" and Scientology's enforcement thereof were
21 working in the legal arena. Heller threatened Armstrong that if
22 Armstrong testified about his knowledge of Hubbard and
23 Scientology, even though Armstrong had been subpoenaed to
24 testify, Scientology would consider such testimony a breach of
25 the "contract" and would sue him. Armstrong researched his
26 rights and responsibilities and concluded that he had a duty to
27 oppose known obstruction of justice. Armstrong petitioned the
28 California Court of Appeal to be able to file a response in the
appeal Scientology had been able to maintain from the

1 Breckenridge decision. Armstrong's filings in the Court of
2 Appeal in 1990 contain his declaration detailing Scientology's
3 post-settlement torts and violations. The Court of Appeal
4 granted Armstrong's petition, he filed a respondent's brief, and
5 the Court affirmed Breckenridge. Following the California
6 Supreme Court's denial of review, Scientology filed a motion in
7 the Court of Appeal to seal the record on appeal. Armstrong
8 opposed the motion, and the Court of Appeal denied it. The
9 complete trial transcript, which contains ten days of Armstrong's
10 testimony about his Scientology experiences up to 1984, is a
11 public document.

12 In August, 1990 Armstrong was greatly moved by the buildup
13 in the Middle East toward war, and the general condition of man.
14 Armstrong prayed to God for guidance as to what he should do, and
15 received the word of God to give away his worldly wealth.
16 Armstrong gave his possessions to those whom he believed had a
17 need for them as put in his heart by God, forgave debts owed to
18 him, and determined to go where God would have him go and do what
19 God would have him do; which he believed was to help where his
20 help was asked for. For the next year God had Armstrong, inter
21 alia, offer himself to resolve the Middle East conflict, do some
22 house painting and carpentry work, deal with the pending appeal,
23 attempt to correct Scientology's subversion of the legal system,
24 agree to help the victims of Scientology who asked for his help,
25 and offer himself to resolve the Scientology conflict in which he
26 had been drawn by Scientology's attacks.

27 Scientology's "fair game" attacks on Armstrong following his
28 responding in Scientology's appeal of the Breckenridge decision
include, but are not limited to, secretly videotaping him; suing

1 him four times; attempting to have him jailed for contempt of
2 court based on Scientology's mischaracterization of his actions
3 and manufactured charges; filing declarations in various courts
4 containing false charges, and using the "settlement contract" to
5 prevent him from responding or punish him for responding; using a
6 paid agent to spread the false rumor that Armstrong has AIDS;
7 disseminating to the media packs of black propaganda which
8 provide Scientology's false version of Armstrong's experiences,
9 including lies that he testified falsely at trial in 1984, that
10 he has adopted a degraded lifestyle, that he is connected to a
11 referral agency for kidnapping, that his defense in the 1984
12 trial was a sham and a fraud, that the Los Angeles Police
13 Department authorized videotaping Armstrong, that he wanted to
14 plant fabricated documents in Scientology files and tell the IRS
15 to conduct a raid, that he wanted to plunder Scientology for his
16 own financial gain, that he never intended to stick to the terms
17 of the "settlement contract", that Armstrong's motives are money
18 and power, that he was incompetent as a researcher, that he
19 perjured himself about surrendering documents to the court, that
20 he wanted to orchestrate a coup in which members of the US
21 government would wrest control of Scientology; publishing black
22 propaganda about Armstrong without stating its source which
23 provide Scientology's false version of Armstrong's experiences
24 including the lies that Armstrong was formerly a heavy drug
25 pusher, that a Marin Independent Journal photo showed him in the
26 nude, that he is psychotic and lives in a delusory world;
27 charging falsely in a letter to the press that Armstrong had
28 distinguished himself by posing naked in a newspaper; attempting
to cause Armstrong trouble with the IRS by writing black

1 propaganda letters about him; distributing packs of black
2 propaganda which attack his lawyer, Ford Greene, and Judge
3 Breckenridge.

4 Armstrong has worked with attorney Greene since August,
5 1991. Throughout that period Scientology has attempted by overt
6 means through misuse of the courts and by covert means to prevent
7 him from working with Greene and from defending himself.

8 Scientology employed a covert operative, whom Scientology had
9 infiltrated into Greene's office, to develop a black propaganda
10 attack that Armstrong and Greene were involved in a homosexual
11 relationship.

12 Throughout its legal attacks on Armstrong Scientology has
13 proclaimed that with the "settlement contract" it sought peace.
14 Scientology also interprets the "settlement contract" to mean
15 that it can say whatever it wants about Armstrong, no matter how
16 false, obnoxious or evil and that he may not respond.
17 Scientology claims that if he does respond in any way he is
18 liable for \$50,000 in liquidated damages. Scientology, after
19 much forum shopping, and much "fair game," was able to deceive
20 one judge, who did not understand, into accepting its
21 interpretation of the "settlement contract" and ruling against
22 Armstrong. Scientology interpreted this judge's ruling to mean
23 that Armstrong owed Scientology \$100,000. Scientology at the
24 same time intimidated Armstrong's attorney, Ford Greene, into
25 getting out of the Armstrong case. Scientology had subjected
26 Greene to years of "fair game" which included infiltrating a
27 covert agent into his office to steal his records and cause
28 trouble; hatching a plot with the covert agent to have Greene
killed; having the agent execute false declarations about Greene;

1 filing five spurious bar complaints against Greene; operating at
2 least two of Greene's clients as their own agents and paying them
3 to execute false declarations against Greene and breach their
4 contract with him. The claim by Scientology for \$100,000,
5 Armstrong's being without an attorney, without money, and without
6 the resources and skills necessary to defend himself, brought
7 Armstrong to file for bankruptcy. Scientology has seized the
8 opportunity to file the instant complaint.

9 Throughout Scientology's legal attacks on Armstrong it has
10 intimidated Flynn into not coming forward to assist Armstrong.
11 Flynn is not only Armstrong's attorney, he is his good friend.
12 Flynn says that the contract is evil and that Scientology is
13 evil; and he wants to help Armstrong. Flynn says that he signed
14 a contract with Scientology to not assist Armstrong, and, while
15 acknowledging that his "contract" with Scientology is illegal, he
16 says that he knows that his life will be ruined even more than it
17 has been by Scientology if he comes forward to help.

18 Armstrong maintains that Scientology's interpretation of
19 the "settlement contract" is unconscionable and unamerican, and
20 should be opposed with all strength. Because there are dozens of
21 these "contracts" among first hand witnesses to Scientology's
22 criminal and tortious practices, and because of Scientology's
23 "fair game" use of the "contract" against Armstrong, a terrible
24 injustice is being abetted by our courts, which should be opposed
25 with all strength. Armstrong also maintains that for one party
26 to a "settlement contract," which is supposed to be essentially a
27 peace accord, to be able to continue to shoot at the other party,
28 who is wounded, has been disarmed and is not being allowed to
defend himself in any way, is not peace at all but a satanic

1 hunting trip. The "settlement contract" is a permit for hunting
2 humans.

3 Armstrong was paid in settlement by Scientology for their
4 years of psychological cruelty, threat and stalking. Scientology
5 did not learn its lesson but continued its cruelty, threat and
6 stalking of Armstrong, a person already psychologically hurt and
7 altered beyond belief by the cruelty, threat and stalking
8 Scientology promised to cease. Armstrong performed his part of
9 the 1986 settlement; he dismissed his cross-complaint, released
10 to Scientology all evidence from his case, removed himself from
11 controversy, and gave Scientology the time and freedom it said it
12 wanted to cease "fair game." Scientology, knowing that they had
13 compromised and removed Armstrong's attorney, failed to perform
14 their part of the settlement, but continued "fair game" against
15 Armstrong, whom they had psychologically wounded and, they
16 thought, rendered defenseless. Scientology, in their paranoia
17 and schizophrenia, which are the inevitable product of the
18 decision for and prolonged use of neo-satanic "power," failed to
19 consider God, from Whom all healing of minds, defense and victory
20 come.

21 In 1991 Armstrong became a Christian. Armstrong had, since
22 leaving Scientology, come to believe he was guided by God, and he
23 sought to be guided in all circumstances in which he found
24 himself. Once its adherents become sufficiently brainwashed
25 Scientology does not permit them to believe in God, labels and
26 treats anyone who believes in God as "psychotic," and enforces
27 the satanic idea that God is an "implant," a false idea installed
28 by pain and electronics in man's mind to enslave him.
Scientology also teaches that Jesus Christ, the whole Gospel

1 story, and Heaven are implants designed to enslave man, and that
2 only Scientology has the way to free mankind from the enslavement
3 of Christianity or other religious beliefs.

4 Scientology promotes to Christians and non-Christians that
5 it is compatible with Christianity, that it holds the Judeo-
6 Christian Bible as a holy work, and that it has no argument with
7 the belief that Jesus Christ was the Savior of Mankind and Son of
8 God. Scientology has distributed promotional materials
9 containing these representations to every member of Congress, to
10 libraries, to the media, to educators, to judges, and to people
11 of influence across this country. Scientology withholds from the
12 public its actual enforced beliefs about God, Christ, Heaven and
13 the Bible. Armstrong believes this is religious fraud, and
14 dangerous to everyone lured into Scientology, those already held
15 by its brainwashing system, and society itself. Armstrong also
16 believes that Scientology's "creed" is a religious fraud because
17 Scientology, under Hubbard's and Miscavige's control, has never
18 acted in accord with it. Scientology systematically abuses its
19 members civil rights, and seeks to remove by whatever means the
20 same civil rights of its non-Scientologist enemies."

21 Scientology promotes actively and aggressively and uses the
22 public postal system, public forums and public media for its
23 promotions. Scientology uses big name celebrities in its
24 promotions, such as John Travolta, Kirstie Alley, Ann Archer and
25 Tom Cruise. Scientology does not permit any of its celebrities
26 to make public their knowledge of Scientology's anti-Christian,
27 anti-religious inner nature, its fraudulent promises and public
28 lies, abuse of human beings, and dangers to families and
children. Surveys done in the past two years by FACTNet, a cult

1 victims advocacy organization has revealed that while vastly
2 overstating its actual membership Scientology has had an
3 inordinate number of suicides, unexplained deaths and psychotic
4 episodes by people undergoing auditing. If any celebrity
5 acknowledged these evils he or she would become "fair game."

6 Armstrong sees that Scientology uses its tax-exempt wealth
7 to violate his and other civil rights. Armstrong believes that
8 this is not a legal purpose and not a purpose for which tax-
9 exempt funds can legally be used. Armstrong sees that
10 Scientology tricks and extorts huge sums of money from people it
11 gets in its system for something of no value. This money will be
12 used to pay lawyers to attack the same people and those who
13 sought to bring to light or curtail the abuse. Armstrong
14 believes that Scientology obtained its tax-exempt status in 1993
15 by illegal means. Armstrong believes that the Internal Revenue
16 Service and the United States government agencies responsible
17 were derelict in their duties in granting such tax exempt status.
18 Armstrong believes that Scientology's leadership is involved in
19 white collar crime, including securities scams and extortion.

20 Scientology will not acknowledge that God works in people's
21 lives. To do so would be a violation of policy, punishable in
22 "ethics," and being labeled and treated as "psychotic." The
23 attorney executing Scientology's complaint, Laurie Bartilson, is
24 a Scientologist. She has executed several documents in the State
25 case which contain false statements about Armstrong. She
26 attempted through false statements to have him jailed for
27 contempt of court. She is completely under the power of David
28 Miscavige. The complaint is colored by her required hatred of
Armstrong.

1 God in this litigation is pointing out gently that He is in
2 charge, and that satan is a bad belief in which faith should not
3 be put because faith in satan is always betrayed. The undeniable
4 fact is that God led Armstrong through his whole life to here;
5 and there is no evidence whatsoever with plaintiff or anyone else
6 that He will not lead Armstrong from here on. Miscavige and
7 Scientology seek through power to bring into belief the illusion
8 that Armstrong is obsessed with Scientology in order to excuse
9 their obsession with him. They are faced with an overwhelming
10 mountain of uncontroverted evidence that Armstrong gave away his
11 worldly assets because he was so guided by God, and for no reason
12 connected with Miscavige, Scientology or Hubbard. Without a jot
13 of evidence they seek to con the world into believing that
14 Armstrong renounced his possessions to facilitate his intended
15 breaches of their hunting permit. God has used Armstrong for His
16 purposes through a time when Miscavige, Scientology and Hubbard
17 declared Armstrong "fair game," and attacked him out of their
18 paranoia and schizophrenia. They have done everything they could
19 that they thought could be argued as being within the law to
20 attack and hurt him, and to hurt others, some of whom have been
21 sent to him because they were hurt. Armstrong's actions in
22 helping anyone are religiously motivated and completely protected
23 by this country's and state's constitutions. Armstrong's
24 experiences in or out of Scientology are sacred and the
25 expression thereof cannot be suppressed in violation of these
26 constitutions.

27 GENERAL DENIAL

28 Armstrong generally denies the allegations in Scientology's
complaint.

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1. Armstrong denies that he has engaged in a pattern of fraud and deceit of any form or nature whatsoever at any time. Armstrong denies that whatever he has or has not done mandates that his bankruptcy petition be dismissed without discharge.

1 Armstrong lacks the information necessary to be able to admit or
2 deny that in 1994 he admitted under oath that he owned 80% of the
3 shares of the stock in the corporation, and was its president and
4 sole employee. Armstrong denies that, second, while testifying
5 at a meeting of creditors, he asserted that The Gerald Armstrong
6 no longer possessed any assets having any commercial value.
7 Armstrong denies that he at any time failed to satisfactorily
8 explain anything he had been asked to explain if he had a
9 satisfactory explanation to give. Armstrong denies that he
10 disposed of not only the \$1 billion in assets claimed by The
11 Gerald Armstrong Corporation. The loss in value of The Gerald
12 Armstrong Corporation's assets was a direct result of
13 Scientology's evil intention and illegal "fair game" actions to
14 destroy Armstrong's reputation, work and life. Armstrong denies
15 that he failed to satisfactorily explain how he disposed of the
16 \$518,000 he received as proceeds of the settlement of his lawsuit
17 against Scientology. Armstrong testified in detail in the State
18 case, despite such interrogation by Scientology being irrelevant,
19 unwarranted and an invasion of his and others' privacy, as to
20 what he did with the proceeds of the settlement with Scientology.
21 Armstrong denies that he received at least \$15,000 in large
22 increments in 1992 and 1993. Armstrong denies that \$15,000 can
23 be received in large increments; whereas, e.g., \$15 trillion, can
24 be received in large increments. Armstrong denies that he failed
25 to satisfactorily explain how he disposed of \$15,000. Armstrong
26 asserts, however, that such information is irrelevant to this
27 action, and he is not required to provide such information to
28 Scientology or to anyone. Armstrong denies that whatever he has
done or not done renders him ineligible for discharge pursuant to

1 11 U.S.C. sections 727(a)(4)(A) and (5). Armstrong denies that
2 he admitted under oath that he entered into an agreement with
3 Scientology that he intended to breach. Armstrong performed
4 Scientology's evil contract until Scientology's own "fair game"
5 actions necessitated his responses in self-defense and in defense
6 of others among Scientology's "fair game" victims. Armstrong
7 desired peace and acted peacefully toward Scientology for three
8 years. Scientology, however, did not want peace, but continued
9 to threaten, stalk and attack Armstrong. Armstrong denies that
10 he has repeatedly and maliciously breached the "agreement"
11 entered into with Scientology. Scientology agreed to cease "fair
12 game," but thereafter repeatedly and maliciously "fair gamed"
13 Armstrong. Armstrong denies that his responses to Scientology's
14 "fair game" resulted in the debt to Scientology which Armstrong
15 seeks to discharge. The "success" of Scientology's "fair game"
16 against Armstrong's attorneys, witnesses and friends, and against
17 judges and the justice system, resulted in the "debt." Armstrong
18 denies that he owes Scientology anything. Armstrong denies that
19 whatever he has done or not done renders the illegal debt
20 Scientology seeks to "collect" nondischargeable pursuant to 11
21 U.S.C. sections 523(a)(2) and (6).

22 JURISDICTION

23 2. Armstrong lacks the information necessary to be able to
24 admit or deny any of the averments in this paragraph.

25 3. Armstrong denies each and every averment in this
26 paragraph.

27 PARTIES

28 4. Armstrong denies that plaintiff herein is a California
non-profit religious corporation. Plaintiff is a single body of

1 all Scientologist adherents world wide, all bound by the will,
2 intentions, policies and orders of David Miscavige. Every unit,
3 division, post, position, branch, bureau, network, corporate
4 entity, director, office, as, e.g., Office of Special Affairs,
5 "church," or any named or unnamed part world wide of all of what
6 can "legally" call itself Scientology, and that body of people
7 who may "legally" call themselves Scientologists, are under the
8 complete control and domination of David Miscavige. Scientology
9 and Scientologists are used by Miscavige to carry out his
10 personal desires, including actions against individuals which are
11 illegal and not activities for which the monies of non-profit
12 religious corporations may legally be used. Miscavige's
13 "official" role is that of head of "Religious Technology Center,"
14 which, "officially," was given the trademarks of "Scientology" by
15 L. Ron Hubbard. Miscavige decides what is "Scientology" and who
16 can be a "Scientologist." Any claim by plaintiff that there is
17 not a unity of control between the entity it presents as
18 plaintiff, the other parts of Scientology, and all Scientologists
19 anywhere, under David Miscavige, should be disregarded. The
20 obtaining of the tax-exempt status for plaintiff's several parts
21 in 1993 was accomplished by fraud, extortion and government
22 complicity and/or dereliction of its duties to this country's
23 citizens. Miscavige has publicly claimed that he personally was
24 responsible for the obtaining of Scientology's tax-exempt status
25 from the government.

26 5. Armstrong admits that he is an individual, but denies
27 that he has been a resident of the City of San Anselmo, County of
28 Marin, State of California at all times relevant herein.
Armstrong became a resident of the City of San Anselmo on or

1 about August 15, 1991.

2 **ANSWER TO GENERAL AVERMENTS**

3 6. Armstrong denies that he owes any legal debt to
4 Scientology. Armstrong admits that the State Action is
5 Scientology v. Armstrong, Marin County Superior Court No. 157680.
6 Armstrong denies that eleven claims against Armstrong for breach
7 of contract remain to be adjudicated. There are, according to
8 Scientology's interpretation of what constitutes a "breach,"
9 millions of "breaches" by Armstrong remaining to be adjudicated.
10 Armstrong denies that he is liable to Scientology for an
11 additional liability claimed of \$1,750,000 plus attorney's fees
12 and costs. The truth is Scientology is liable to Armstrong for
13 attorney's fees and costs and for damages as a result of its
14 illegal, tortious, and outrageous "fair game" acts against him.
15 Armstrong denies that Scientology's hunger for a permanent
16 injunction is to prohibit Armstrong from further breaching
17 certain terms of the "contract." Scientology's efforts are a
18 smoke screen to hide the fact, and delay the judicial finding,
19 that the "contract" is illegal and evil. Scientology is seeking
20 to prohibit Armstrong from living his life in peace, and is
21 seeking to destroy him through its "fair game" use of the power
22 of the courts.

23 7. Armstrong admits that he signed Scientology's
24 "contract" in December, 1986. Armstrong admits that it settled
25 his cross-complaint against Scientology, but denies that it
26 settled the litigation between Scientology and Armstrong because
27 Scientology never intended by its "contract" to have the
28 litigation settle, nor acted in a way which would allow a
settlement. Scientology used the "contract" as a contract on

1 Armstrong permitting it to continue to attack Armstrong and
2 continue to subject him and its other targeted "enemies" to "fair
3 game" with imagined impunity.

4 8. Armstrong denies that he had been actively pursuing a
5 career as an anti-Scientology "expert" and paralegal. Armstrong
6 is an expert in Scientology's "theology," fraud and its
7 philosophy and practice of "fair game." Armstrong is a
8 paralegal. Armstrong was forced into litigating against
9 Scientology and working as a paralegal for a lawyer litigating
10 against Scientology by its "fair game" attacks and threat to his
11 life and loved ones. Armstrong denies that he ever agreed that
12 he would not disclose his knowledge or experiences in
13 Scientology. Armstrong knew that it was impossible to not
14 disclose such knowledge and experiences, and that the "contract"
15 calling for such psychological enslavement was evil and illegal.
16 Armstrong's attorney, moreover, advised Armstrong that the
17 "contract's" condition prohibiting such disclosure was not worth
18 the paper it was printed on and unenforceable, and that Flynn had
19 also advised Scientology of that fact. Armstrong admits that the
20 "contract" provides that Armstrong is to pay Scientology \$50,000
21 per utterance.

22 9. Armstrong admits that Scientology sued him in February
23 1992 to enforce its illegal "contract," and sought and obtained a
24 preliminary injunction; but denies that the preliminary
25 injunction enforced portions of the "contract." Los Angeles
26 Superior Court Judge Ronald Sohigian rewrote a portion of the
27 "contract," and it was this rewritten portion which was
28 "enforced" by the preliminary injunction.

10. Armstrong admits that, and that he has testified that,

1 in August, 1990, in answer to his prayer to God seeking guidance
2 concerning whatever God sought for him at the time of and in
3 consideration of the Middle East crisis, and generally and man's
4 condition, God put the idea in his mind and heart to give away
5 what he had; i.e, those things the "world" and "Scientology"
6 consider valuable. Armstrong denies that he transferred real
7 property valued at \$530,000 and at least \$35,000 in cash to his
8 friend and lawyer, Michael Walton. In 1988 through 1989
9 Armstrong participated as an investor in the purchase of a lot in
10 Sleepy Hollow, California, and the building thereon of a nice
11 spec house. In early 1990, Armstrong, for various reasons
12 unrelated to Scientology, purchased the house himself, along with
13 Michael Walton, who, Armstrong admits, was his friend and lawyer.
14 Armstrong made a downpayment of approximately \$130,000, and that
15 was his actual equity in the property, which was itself valued at
16 approximately \$530,000 at that time. After the completion of
17 the building of the house, Armstrong, who was then living in
18 another house, which he sold to purchase the Sleepy Hollow house,
19 received the series of threatening telephone calls from
20 Scientology attorney Lawrence Heller which necessitated his
21 becoming active again in his legal and extralegal defense (see
22 History at 13:15-27, supra). At the time Armstrong and Walton
23 moved into the house in May, 1990 Walton had agreed to represent
24 Armstrong in the pending appeal from the Breckenridge decision.
25 Armstrong then had a plan of living life in Sleepy Hollow,
26 running, riding, writing, drawing and other things, such as
27 picking up the world's trash, solving the economy issue, or
28 zeroing in on the Unified Field. The August 2 invasion of Kuwait
by Iraq and the immediate international crisis that followed,

1 televised 24 hours a day in power and detail, greatly affected
2 Armstrong. He admits that as the "world" and Scientology view
3 life, he had already been greatly affected in everything by God,
4 in whom he believed, with whom he communicated, and to whom he
5 prayed and looked for guidance and the courage to do what he
6 believed God called him to do. After being so guided by God,
7 Armstrong merely transferred to Walton, who was already on title
8 in the Sleepy Hollow house, his interest therein. Armstrong
9 denies that he transferred at least \$35,000 in cash to Walton.
10 Armstrong had, at the time of his and Walton's purchase of the
11 property, deposited an amount of cash into a joint checking
12 account intended to cover house expenses and needs for one year.
13 When Armstrong transferred his interest in the house to Walton,
14 Walton assumed the house's loan payments, and all other expenses
15 and needs thereafter. Armstrong, by leaving the approximately
16 \$35,000 in the joint bank account, was attempting to respect his
17 agreement and arrangement with Walton, perform what he saw as a
18 contract, and to ensure Walton had the wherewithal, no matter
19 what happened to Armstrong, to survive in the house and embark on
20 his career. Armstrong admits that in August, 1990 he forgave all
21 debts owed to him by friends and family members, and gave away
22 the remainder of his cash, some \$1500.00. That cash was repaid
23 to Armstrong in many ways since then. Armstrong denies that he
24 asserted under oath that he received no valuable consideration
25 for these transfers. Armstrong has asserted under oath, and now
26 reasserts, that he received the treasures of God, beyond human
27 wealth and understanding, for his small willingness to give away
28 things which have no value. Armstrong denies that he has not
produced any records of any of these transactions, other than the

1 transfer of the real property to Walton. Armstrong produced to
2 Scientology in the State Action each and every document,
3 totalling hundreds of pages, reflecting or concerning in any way
4 each and every one of these transactions.

5 11. Armstrong called his company The Gerald Armstrong
6 Corporation, or "TGAC," or "Teegeeack."

7 12. Armstrong admits the averments of this paragraph,
8 except he denies that The Gerald Armstrong Corporation, or TGAC
9 or Teegeeack was ever known as GAC. Armstrong admits that The
10 Gerald Armstrong Corporation had at one time considerable worldly
11 value.

12 13. Armstrong admits that The Gerald Armstrong Corporation
13 possessed a number of Gerald Armstrong's artistic and literary
14 works, possessed rights to a number of his inventions and
15 formulas, and was in the business of bringing peace and
16 exploiting its assets for commercial and peaceful purposes.
17 Armstrong admits that the business of TGAC was at one time to,
18 inter alia, care for, promote and exploit the works of Gerald
19 Armstrong, but denies that it now has any significant business of
20 any kind, except to attempt to wrap up its affairs in a peaceful
21 manner.

22 14. Armstrong admits that in August, 1990 he divided his
23 100% ownership of TGAC into four equal shares and gave these
24 shares to Michael Walton, Michael Douglas, Lorien Phippeny and
25 Nancy Rodes, and that these people paid him nothing for their
26 shares.

27 15. Armstrong denies that shortly after making the August,
28 1990 transfers he initiated successive, or any, breaches of
Scientology's "contract." The earliest "breach" Scientology

1 alleges in its State Court action is in July, 1991. In February,
2 1990, Armstrong had already publicly exposed Scientology's post
3 settlement "fair game" and Scientology's use of the "contract" to
4 obstruct justice, and had opposed Scientology's efforts to
5 enforce the "contract," in Scientology's appeal from the
6 Breckenridge decision.

7 16. Armstrong admits that he reacquired the stock which he
8 had distributed to Walton, Douglas, Phippeny and Rodes.
9 Armstrong admits that Andrew Armstrong, Anthony Armstrong, Thomas
10 McPherson, Michael Dick, Trevor and Colin Dick and Michael Walton
11 own shares in TGAC.

12 17. Armstrong admits that he is Teegeeack's president, sole
13 director, and only employee. Teegeeack has been suspended and
14 its business and activities are negligible. It does have a
15 single bank account and Gerald Armstrong is the sole signatory
16 thereon.

17 18. Armstrong lacks the information necessary to know if he
18 testified under oath in March, 1993 that he estimated the value
19 of the assets of TGAC to be \$1,000,000,000 to \$1,500,000,000.

20 19. Armstrong admits that he testified at the meeting of
21 creditors in May, 1995 that The Gerald Armstrong Corporation has
22 no present commercial value.

23 Armstrong incorporated TGAC in 1987 and activated it in 1988
24 to be a vehicle for his work in the world. Armstrong is a writer
25 and artist with a number of unique ideas and talents. He
26 believed that TGAC was a funny, loving and potentially
27 commercially profitable idea, and he developed artistic and
28 socially redeeming concepts with this belief in mind. While
doing so, he continued to be aware of Scientology's ongoing

1 hatred of him and its "fair game" toward him and others; yet
2 while continuing to be aware of said hatred and "fair game," he
3 hoped that peace could prevail, and he did whatever he could to
4 make and keep peace.

5 In late 1989, as described above, Scientology brought
6 Armstrong back into its conflict. Much of Armstrong's attention
7 and time thereafter was taken up in dealing with Scientology's
8 threat and the legal actions necessary to defend himself and
9 others in an arena in which he had no formal training, and in
10 which his former attorney had been contracted away from defending
11 or assisting him by Scientology as part of its "fair game"
12 campaign. Nevertheless, Armstrong continued to be hopeful about
13 his and TGAC's future, continued to believe that TGAC had
14 stupendous potential, and did not think, believe or realize that
15 Scientology was stupid enough to seek to judicially enforce its
16 evil "contract." In this, Armstrong admits that it can be argued
17 that he was naive about and underestimated both Scientology's
18 vindictiveness, and the ease with which our courts allow
19 themselves to be used, as Hubbard mandated, to harass.

20 Even after Armstrong renounced his worldly things in August,
21 1990, he continued to believe TGAC had great potential, and could
22 be great fun and commercially profitable for his four friends to
23 whom he had given the company. When Armstrong woke up to the
24 level of Scientology's vindictiveness toward him and the level of
25 danger he and anyone connected to him was in, and after three of
26 the owners of the majority of TGAC's stock expressed their fear
27 of "fair game," Armstrong agreed with the four owners to accept
28 back their majority ownership, and to be responsible for the
corporation and whatever was to become of it. Armstrong was then

1 working full time with attorney Ford Greene, under concentrated
2 attack from Scientology, and threatened in every part of his
3 life.

4 In early 1994, after becoming aware of Scientology's
5 increasing and unending overt and covert attacks on his character
6 and reputation, Armstrong accepted that he was completely unable
7 to live a normal or safe life or develop any of his artistic or
8 intellectual ideas. Armstrong saw that if he did develop any
9 such ideas Scientology would do whatever was necessary to destroy
10 or pervert the ideas and threaten or harm anyone with whom
11 Armstrong became involved in the development of his ideas.
12 Scientology has libeled Armstrong internationally, claiming in
13 mailings to countless people in the media, government and
14 artistic circles that he, inter alia, lived a degraded lifestyle,
15 testified falsely, was a heavy drug pusher, is connected to
16 kidnappers, is incompetent, is psychotic and delusory, posed nude
17 in a newspaper, and has AIDS.

18 Armstrong also accepted that Scientology wants him killed
19 and that his life has no worldly future and is in grave danger.
20 In 1984 Scientology's head private investigator Eugene M. Ingram,
21 who works directly with David Miscavige, threatened to put a
22 bullet between Armstrong's eyes. Ingram was at that time
23 involved in corrupting a Los Angeles Police Officer to give
24 Ingram a phony authorization to wiretap and secretly videotape
25 Armstrong, Flynn and other people. Armstrong believes that
26 Ingram participated in Scientology's effort in 1985 to have
27 Armstrong charged criminally by the FBI based on their false
28 statements. In 1986 Ingram participated in an effort to have
Armstrong jailed on false charges. Ingram and Miscavige are

1 connected to known criminals, including criminals in prison, and
2 Armstrong believes that it is very possible that Ingram and
3 Miscavige would arrange to have him killed or harmed if they ever
4 got him incarcerated. In 1987 Miscavige had Scientology agents
5 spread the false rumor in Europe that Armstrong is "an admitted
6 agent provocateur of the US government." Armstrong believes that
7 Miscavige's intention behind the fabrication and dissemination of
8 that lie was to facilitate and provide plausible deniability for
9 Armstrong's assassination by "anti-US agents." Armstrong
10 believes that Ingram's concocting and spreading the false rumor
11 that Armstrong has AIDS was very possibly in advance of a covert
12 intelligence operation to somehow infect Armstrong with the AIDS
13 virus. Miscavige and Scientology, using attorney Bartilson,
14 attempted, with repeated motions and pressure, from the end of
15 1992 through July of 1994 to have Armstrong jailed for contempt
16 of court based on their perjury and perversion of the truth.
17 Armstrong believes that Miscavige and his Scientologist and non-
18 Scientologist agents are desperate and that their desperation is
19 increasing. Armstrong believes that because of the bizarre and
20 cruel lengths Miscavige and his agents have gone to and continue
21 to go to destroy Armstrong, they see him as a tremendous risk to
22 their illusion of power, and are driven ever more madly to
23 destroy him.

24 Armstrong has been given a fun way to clean the world of all
25 its trash. He has the way to peacefully end the world's economic
26 slavery and sadness. He has been given the formula for the
27 Unified Field. He believes he has been given the mathematical
28 proof of God's Guidance. These things have untold potential and
hope for mankind. Yet Scientology is doing whatever it can to

1 destroy that potential and deny those hopes for Armstrong and
2 mankind.

3 Scientology has spread the black propaganda in the artistic
4 arena that Armstrong has no connection to art or artists.
5 Scientology denigrates every word Armstrong has ever written. In
6 its publications sent to media everywhere, it calls him
7 incompetent. It has done whatever it could to destroy his
8 reputation. Now that it has done so, and destroyed the potential
9 value and market for his ideas, it claims he is stating falsely
10 that TGAC has no present commercial value. The Gerald Armstrong
11 Corporation depends completely on Armstrong's good name and good
12 will. Scientology has done whatever it could to destroy that
13 good name and good will. Scientology has spent millions of
14 dollars to attack Armstrong's person, ridicule his ideas and ruin
15 his career. Now they spend more to attack him for daring to be
16 beaten by them to a pulp. Now they lament that what they
17 destroyed was worth so many billions of dollars.

18 Armstrong has the formula for the Unified Field, something
19 sought by scientists and thinkers for decades. Scientology
20 spreads the calumny that Armstrong is psychotic and delusory.
21 Armstrong sees that no one in his right mind would believe that a
22 psychotic and delusory person could divine the formula for the
23 Unified Field. Armstrong recognizes that Scientology's attacks
24 and cruelty and years of "fair game" threat have had a deep
25 affect on his mind, and he acknowledges that he is not a rocket
26 scientist. Armstrong believes that if he were to announce and
27 develop his formula, Scientology would destroy his work.
28 Miscavige is jealous of Armstrong's free mind and ideas.
Miscavige's jealousy is reflected by his cruel attacks, his

1 squandering of millions of dollars of Scientology funds, and
2 consuming countless hours of Scientologists' time in the waste of
3 destroying Armstrong. Armstrong believes that he must resolve
4 the Scientology conflict, and that he is called by God to resolve
5 this conflict, before he can safely develop his ideas.

6 Scientology is itself responsible, by its stalking of
7 Armstrong, its black propaganda and its physical threats, for
8 destroying Teegeeack's potential and commercial value.

9 **FIRST CLAIM FOR RELIEF**

10 (Dischargeability of Armstrong's Debts

11 Pursuant to 11 U.S.C. Section 727(a)(4)(A))

12 20. Armstrong incorporates by reference his statements
13 above as though fully set forth herein.

14 21. Armstrong admits the averments of this paragraph.

15 22. Armstrong denies that TGAC was at all times operated by
16 and for the benefit of Gerald Armstrong as his alter ego.
17 Armstrong operated TGAC for the benefit of its shareholders and
18 everyone else on earth.

19 23. Armstrong denies that any failure to include his
20 ownership of Teegeeack on Schedule B was a deliberate omission of
21 a material matter constituting a false oath or account in
22 connection with the case. Armstrong believes that his oversight
23 was a gift from God, which Armstrong was unaware of at the time,
24 to bring him to this point, to cause Scientology to leap at
25 another opportunity to attack and persecute him for God's
26 purpose, and to cause him to write these words to facilitate the
27 resolution of the Scientology conflict.

28 24. Armstrong denies that he failed to disclose his
ownership of TGAC, and denies that at any time he intended to

1 mislead anyone as to his true financial condition or with any
2 disregard whatsoever for the truth.

3 **SECOND CLAIM FOR RELIEF**

4 (Dischargeability of Armstrong's Debts

5 Pursuant to 11 U.S.C. Section 727(a)(5))

6 25. Armstrong incorporates by reference his statements
7 above as though fully set forth herein.

8 26. Armstrong admits the averments of this paragraph.

9 27. Armstrong denies that three large payments total
10 \$15,000. Armstrong asserts that wherever any small payments came
11 from in 1993 totalling \$15,000 is irrelevant and Scientology has
12 no right to that information.

13 28. Armstrong admits that he testified that TGAC has no
14 commercial value.

15 29. Armstrong denies that he has provided no satisfactory
16 explanation for anything, including why Scientology destroys and
17 destroyed Armstrong's life, career, reputation, friendships, good
18 will and great ideas.

19 **THIRD CLAIM FOR RELIEF**

20 (Dischargeability of Armstrong's Debts

21 Pursuant to 11 U.S.C. Section 523(a)(2))

22 30. Armstrong incorporates by reference his statements
23 above as though fully set forth herein.

24 31. Armstrong denies that Scientology entered into the
25 "contract" with Armstrong in good faith, and denies that it
26 performed its part in full.

27 32. Armstrong denies that he falsely represented to
28 Scientology that he understood every provision of the "contract."
Armstrong asserts that Scientology knew through Flynn that

1 Armstrong knew that the "contract" was not worth the paper it's
2 printed on, unenforceable and illegal.

3 33. Armstrong denies that he ever said anything about not
4 abiding by the "contract" if it was inconvenient to him.

5 34. Armstrong denies that he put on a happy face at the
6 videotaped "contract" signing in order to persuade Scientology to
7 enter into the "contract" and pay him. Armstrong would have been
8 very happy to not sign. Armstrong signed because Scientology
9 promised to stop its "fair game" against him and everyone else if
10 he did so.

11 35. Armstrong denies that CSI relied on anything but its
12 "fair game" doctrine, including the intimidation and compromise
13 of Armstrong's attorney, in order to concoct and present to
14 Armstrong its "contract."

15 36. Armstrong denies that Scientology would not have paid
16 Armstrong \$800,000 if it had known that Armstrong did not intend
17 to abide by the nondisclosure provisions of the "contract."
18 Scientology did not know what it was paying Armstrong; it could
19 have been anywhere between \$0 and everything Scientology paid to
20 Flynn.

21 37. Armstrong denies that his conduct at the time of
22 signing Scientology's "contract" constituted false pretenses
23 and/or false representations which Armstrong knew to be false
24 and/or which he made with reckless disregard as to their truth or
25 falsity. Armstrong signed to give Scientology peace and freedom
26 which it rejected and chose instead war.

27 **FOURTH CLAIM FOR RELIEF**

28 (Dischargeability of Armstrong's Debts

Pursuant to 11 U.S.C. Section 523(a)(6))

1 38. Armstrong incorporates by reference his statements
2 above as though fully set forth herein.

3 39. Armstrong denies that he ever hid any assets of any
4 kind. He denies that he ever set out on a course of conduct
5 intended deliberately to damage and harass Scientology or anyone.
6 Scientology is not damaged by anything Armstrong has done.
7 Scientology precipitated and caused Armstrong's responses by its
8 own "fair game" acts toward him, and by engaging him in post-
9 settlement controversy and conflict. Armstrong has done nothing
10 with the intent and purpose of impeding, injuring and destroying
11 Scientology or its "faith." Armstrong has sought to bring about
12 a peaceful resolution of Scientology's "fair game" toward him.
13 Scientology has rejected each offer of peace and every attempt to
14 resolve the conflict.

15 40. Armstrong denies that any of his actions are deliberate
16 and malicious. Armstrong denies that he ever asked any funds of
17 anyone to keep silent. Armstrong denies that he has an anti-
18 Scientology campaign. Armstrong has attempted to defend himself
19 in Scientology's anti-Armstrong campaign.

20 FIRST AFFIRMATIVE DEFENSE

21 (Failure To State A Cause Of Action)

22 41. Further answering said complaint, and as a first,
23 separate and affirmative defense thereto, defendant Armstrong
24 realleges and incorporates by reference herein each and every
25 allegation contained above and alleges as follows:

26 The complaint and each cause of action contained therein
27 fails to state a cause of action against defendant upon which
28 relief can be granted.

SECOND AFFIRMATIVE DEFENSE

1 (This Court Cannot Enjoin The Practice Of A Profession)

2 42. Further answering said complaint, and as a second,
3 separate and affirmative defense thereto, defendant realleges and
4 incorporates by reference herein each and every allegation
5 contained above and alleges as follows:

6 Any attempt by plaintiff to limit the ability to obtain
7 gainful employment by defendant is void and unenforceable as a
8 matter of public policy, and constitutes an unenforceable
9 restraint on the right of defendant to pursue his chosen
10 profession, inasmuch as plaintiff seeks to have adjudged legal
11 and enforced a "contract" which does not permit defendant to work
12 as a paralegal for Ford Greene, and defendant is employed as a
13 paralegal for Ford Greene. Plaintiff, moreover, seeks to prevent
14 defendant from pursuing his profession of prophesy, and defendant
15 is actively engaged in such profession.

16 THIRD AFFIRMATIVE DEFENSE

17 (Unclean Hands)

18 43. Further answering said complaint, and as a third,
19 separate and affirmative defense thereto, defendant realleges and
20 incorporates by reference herein each and every allegation
21 contained above and alleges as follows:

22 Plaintiff is barred from bringing this action against
23 defendant and/or obtaining the equitable relief under the
24 doctrine of unclean hands, because plaintiff: has subjected
25 defendant to plaintiff's "fair game" policy; has subjected
26 defendant's attorney to "fair game" and forced him to sign an
27 illegal contract which prevents him from defending defendant or
28 assisting defendant against plaintiff's attacks; has itself
breached the "settlement contract" which it seeks to enforce

1 against defendant; has employed the "settlement contract" to
2 suppress evidence of its criminal and civil wrongdoing in order
3 to avoid liability to defendant and to other individuals and
4 entities which it has harmed, and/or over which it has taken
5 unfair advantage; and has in a manner not allowed by law used the
6 Courts against defendant to achieve ends not allowed by law.

7 FOURTH AFFIRMATIVE DEFENSE

8 (In Pari Delicto)

9 44. Further answering said complaint, and as a fourth,
10 separate and affirmative defense thereto, defendant realleges and
11 incorporates by reference herein each and every allegation
12 contained above and alleges as follows:

13 Notwithstanding the things alleged of defendant in the
14 complaint, which are denied in the applicable paragraphs herein,
15 plaintiffs' and its counsels' conduct in connection with the
16 events giving rise to this action bars plaintiff from recovery
17 with regard to the complaint under the doctrine of in pari
18 delicto. Plaintiff is at least equally at fault and at least
19 equally responsible for the things alleged of defendant.

20 FIFTH AFFIRMATIVE DEFENSE

21 (Illegality)

22 45. Further answering said complaint, and as a fifth,
23 separate and affirmative defense thereto, defendant realleges and
24 incorporates by reference herein each and every allegation
25 contained above and alleges as follows:

26 Plaintiff is barred from bringing this action as a result of
27 its acts of illegality in connection with matters that give rise
28 to this case. Particularly plaintiff and other Scientology-
related entities engaged in a wholesale attempt to obstruct

1 justice, suppress evidence in order to deny redress, due process,
2 and equal protection of the law to its civil and criminal victims
3 by means of obtaining settlements of litigation in actions in
4 various state and federal courts across the United States. In
5 each of those actions attorney Michael J. Flynn was attorney of
6 record, or coordinating counsel for litigants adverse to
7 Scientology. In each of those actions litigants adverse to
8 Scientology were coerced into signing "secret settlement
9 contracts" the terms of which were substantially similar to those
10 set forth in the "settlement contract" at issue herein.

11 Plaintiff is further barred from bringing this action
12 because as a material part of entering the "settlement contract"
13 with defendant, plaintiff required defendant's counsel, Michael
14 Flynn, to sign secret side agreements for indemnification for
15 resolution of the retrial of the original Armstrong litigation
16 were plaintiff and other Scientology-related entities successful
17 in obtaining reversal of Judge Breckenridge's decision on appeal.
18 In such agreement Scientology promised to limit its collections
19 of damages to \$25,001.00 and to indemnify Flynn for the payment
20 thereof and Flynn, in turn, would indemnify Armstrong for any
21 such judgment. The existence of these secret, side agreements
22 were never disclosed to Armstrong by Flynn, plaintiff, or other
23 Scientology-related entities.

24 Plaintiff is further barred from bringing this action
25 because as a material part of entering said "settlement
26 contracts," it or its agents required attorney Flynn to promise
27 never to take any anti-Scientology cases in the future and to not
28 defend or assist defendant in future attacks by Scientology.

Furthermore, other acts of illegality by plaintiff and other

1 Scientology-related entities have been publicly documented.
2 Plaintiffs have engaged in acts of impropriety, as set forth
3 above, and including what the US District Court for the Central
4 District of California referred to in a written order, entered
5 after most of the events in issue herein, as "outrageous
6 litigation tactics." Also, in addition to the Flynn "settlement
7 contracts" the conduct of plaintiff and other Scientology-related
8 organizations, entities and individuals against persons "adverse
9 to Scientology" including citizens, counsel, judges and
10 government authorities (including but not limited to illegal
11 surveillance, obtaining telephone company records, breaking and
12 entering, threatening conduct, and violence) have discouraged and
13 intimidated knowledgeable persons from disclosing their knowledge
14 about, or otherwise coming forward against, the illegal
15 activities of plaintiff and other Scientology-related
16 organizations, entities and individuals, and from assisting
17 victims thereof to obtain redress, due process and equal
18 protection of the law.

19 SIXTH AFFIRMATIVE DEFENSE

20 (Fraud and Deceit)

21 46. Further answering said complaint, and as a sixth,
22 separate and affirmative defense thereto, defendant realleges and
23 incorporates by reference herein each and every allegation
24 contained above and alleges as follows:

25 Plaintiff is barred from bringing this action against
26 defendant because of its fraud and deceit in representing to
27 defendant that its management had changed and no longer would
28 engage in antisocial and illegal activities ("fair game,") that
it wanted to buy peace, that it would leave defendant, and

1 everyone else alone, and that the false affidavit that it
2 required defendant to sign as a condition of the settlement would
3 be disclosed only if defendant attacked Scientology. Plaintiff
4 made the foregoing representations to defendant with knowledge of
5 the falsity thereof at the time said representations were made
6 and with the intent to deceive defendant, who actually and
7 justifiably relied on those material misrepresentations to his
8 injury by signing the "settlement contract." In fact,
9 Scientology never intended to cease its illegal and immoral
10 activities, never intended to buy peace with defendant, never
11 intended to leave defendant or any other perceived "enemy" alone,
12 never intended not to use the false declaration only if defendant
13 attacked Scientology, and never intended to abide by the terms of
14 the "settlement contract." Rather plaintiff and other
15 Scientology-related entities intended to use the "settlement
16 contract" as a tool for the implementation of their "fair game"
17 policy and Scientology's litigation tactics so as to engineer a
18 reversal of Judge Breckenridge's decision, to collusively resolve
19 any re-trial of the original Armstrong case, to obtain possession
20 of the so-called MCCS tapes which were evidence of Scientology
21 employing attorneys for the purpose of committing future crimes
22 and frauds, to use the false declaration in other litigation
23 without regard to defendant's conduct, and to otherwise obstruct
24 justice and suppress evidence of facts which discredited
25 plaintiff and other Scientology-related entities.

26 Scientology's litigation strategy is as follows:

27 "The law can be used very easily to harass, and enough
28 harassment on somebody who is simply on the thin edge
anyway, well knowing that he is not authorized, will

generally be sufficient to cause his professional
decease. If possible, of course, ruin him utterly."

From the outset, prior to the execution of the "settlement
contract" with defendant, and the execution of all other Flynn
"settlement contracts," it was the intent of plaintiff and other
Scientology-related organizations, entities and individuals to
continue to wage war on and harass defendant, to continue to
engage in illegal activities and conduct, and to suppress
evidence and obstruct justice by means of said agreements, and to
use said agreements as a tool of "fair game" and the litigation
strategy of ruin in order to ensure that information regarding
Scientology's crimes and civil misconduct would stay suppressed,
and its criminal and civil victims would be denied legal redress
and justice.

Moreover, Flynn advised defendant that he would always be
available in the future to represent defendant if defendant had
to litigate with Scientology in the future. Said statement was
false and misleading because Flynn had signed an agreement with
Scientology promising not to represent anyone including defendant
in litigation involving Scientology in the future, and
specifically to not assist defendant in any way in any such
litigation. Armstrong relied on the truth of Flynn's statement
in signing the "settlement contract."

SEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

47. Further answering said complaint, and as a seventh
separate and affirmative defense thereto, defendant realleges and
incorporates by reference herein each and every allegation
contained above and alleges as follows:

1 Plaintiff is equitably estopped from asserting each and all
2 of the purported causes of action in the complaint by reason of
3 its own acts, omissions, and conduct, or that of its agents,
4 including, but not limited to the fact that it violated the
5 "settlement contract" in that it or its agents provided
6 information from the original Armstrong case that was the subject
7 of the "settlement contract" to various persons and in various
8 litigation including but not limited to The London Sunday Times,
9 The Los Angeles Times, the instant litigation, the Corydon
10 litigation, and in Church of Scientology of California v. Russell
11 Miller and Penguin Books Limited in the High Court of Justice,
12 Case No. 6140 in London, England, where a Scientology-related
13 entity filed multiple affidavits attacking defendant.

14 As yet a further basis for barring plaintiff on the ground
15 of estoppel, defendant has requested the Scientology entities to
16 release Flynn and defendant's other former attorneys from the
17 agreements they signed never to represent Armstrong again, and
18 plaintiff and all other Scientology entities have refused to do
19 so.

20 EIGHTH AFFIRMATIVE DEFENSE

21 (Waiver)

22 48. Further answering said complaint, and as an eighth
23 separate and affirmative defense thereto, defendant realleges and
24 incorporates by reference herein each and every allegation
25 contained above and alleges as follows:

26 Plaintiff is barred from bringing this action against
27 defendant, by reason of its own acts, omissions and conduct, or
28 that of its agents. Following the December, 1986 signing of the
"settlement contract," Scientology continued to attack Armstrong,

1 published its own, and false, versions of his history, and
2 engaged him in controversy concerning his experiences and
3 knowledge of Scientology.

4 NINTH AFFIRMATIVE DEFENSE

5 (Mistake Of Law)

6 49. Further answering said complaint, and as a ninth
7 separate and affirmative defense thereto, defendant realleges and
8 incorporates by reference herein each and every allegation
9 contained above and alleges as follows:

10 Plaintiff is barred from bringing this action against
11 defendant, because defendant's former attorney, Michael Flynn,
12 advised said defendant that the provisions of the "settlement
13 contract" that plaintiff is seeking to enforce against defendant
14 were not in any way enforceable. Defendant relied on such
15 representations, but for which he would not have signed said
16 "settlement contract."

17 TENTH AFFIRMATIVE DEFENSE

18 (Mistake Of Fact)

19 50. Further answering said complaint, and as a tenth
20 separate and affirmative defense thereto, defendant realleges and
21 incorporates by reference herein each and every allegation
22 contained above and alleges as follows:

23 Plaintiff is barred from bringing this action against
24 defendant, because defendant's former attorney, Michael Flynn,
25 advised defendant that the provisions of the "settlement
26 contract" that plaintiff is seeking to enforce were not in any
27 way enforceable. Defendant relied on such representations, but
28 for which he would not have signed said "settlement contract."

ELEVENTH AFFIRMATIVE DEFENSE

1 (Conflict of Interest)

2 51. Further answering said complaint, and as an eleventh
3 separate and affirmative defense thereto, defendant realleges and
4 incorporates by reference herein each and every allegation
5 contained above and alleges as follows:

6 Plaintiff is barred from bringing this action against
7 defendant, because defendant's former attorney, Michael Flynn, in
8 conjunction with settling defendant's case against Scientology-
9 related entities, also settled 30 other cases, including cases of
10 his own against Scientology-related defendants without procuring
11 outside counsel for defendant. Scientology created the state of
12 conflict of interest by subjecting Flynn to "fair game" and then
13 requiring Flynn get his clients to sign illegal and immoral
14 "settlement contracts" with Scientology to their detriment.

15 TWELFTH AFFIRMATIVE DEFENSE

16 (Duress and Undue Influence)

17 52. Further answering said complaint, and as a twelfth
18 separate and affirmative defense thereto, defendant realleges and
19 incorporates by reference herein each and every allegation
20 contained above and alleges as follows:

21 Plaintiff is barred from bringing this action against
22 defendant because Scientology had implemented "fair game" policy
23 stratagems on defendant's attorney, Michael J. Flynn and upon
24 other anti-Scientology litigants, and would continue such conduct
25 against all such persons unless all said anti-Scientology
26 litigants, including Flynn, signed "settlement contracts"
27 substantially similar to that signed by defendant.

28 Further, in early December 1986, attorney Flynn and other
anti-Scientology litigants, postured Armstrong as a deal breaker,

1 by stating that their desires to settle would be ruined unless
2 defendant Armstrong agreed to settle and led him to believe if he
3 did not sign the agreement, they would not cooperate in such
4 event by acting as Armstrong's witnesses and zealous advocate on
5 the trial of his cross-complaint against Scientology set to
6 commence shortly thereafter in the original Armstrong case.

7 THIRTEENTH AFFIRMATIVE DEFENSE

8 (Laches)

9 53. Further answering said complaint, and as a thirteenth
10 separate and affirmative defense thereto, defendant realleges and
11 incorporates by reference herein each and every allegation
12 contained above and alleges as follows:

13 Plaintiff is barred from bringing this action against
14 defendant on the grounds of laches. Plaintiff, through its
15 attorney Lawrence Heller, asserted from December, 1986 until
16 March 27, 1990, that Scientology entities, pursuant to the
17 "settlement contract," could not discuss defendant's experiences
18 and knowledge. Scientology's delay in changing its position is
19 unreasonable.

20 FOURTEENTH AFFIRMATIVE DEFENSE

21 (Impossibility)

22 54. Further answering said complaint, and as a fourteenth
23 separate and affirmative defense thereto, defendant realleges and
24 incorporates by reference herein each and every allegation
25 contained above and alleges as follows:

26 Plaintiff is barred from bringing this action against
27 defendant on the grounds of impossibility.

28 FIFTEENTH AFFIRMATIVE DEFENSE

(Frustration of Contractual Purpose)

1 55. Further answering said complaint, and as a fifteenth
2 separate and affirmative defense thereto, defendant realleges and
3 incorporates by reference herein each and every allegation
4 contained above and alleges as follows:

5 Plaintiff is barred from bringing this action against
6 defendant on the grounds of frustrating defendant's ability to
7 perform the terms of the "settlement contract." Scientology's
8 own actions following the "settlement" pursuant to its "fair
9 game" doctrine has made defendant's obtaining of the "peace" and
10 freedom from "fair game," which Scientology promised, impossible.
11 Scientology's own actions in violation of the spirit and letter
12 of the "settlement contract" have necessitated defendant's
13 defense in the legal arena and in the public marketplace of
14 ideas.

15 SIXTEENTH AFFIRMATIVE DEFENSE

16 (Unfair and Unreasonable Contract)

17 56. Further answering said complaint, and as a sixteenth
18 separate and affirmative defense thereto, defendant realleges and
19 incorporates by reference herein each and every allegation
20 contained above and alleges as follows:

21 Plaintiff is barred from bringing this action against
22 defendant on the grounds that the "settlement contract" is
23 unreasonable and unfair as to defendant.

24 SEVENTEENTH AFFIRMATIVE DEFENSE

25 (Lack of Mutuality)

26 57. Further answering said complaint, and as a seventeenth
27 separate and affirmative defense thereto, defendant realleges and
28 incorporates by reference herein each and every allegation
contained above and alleges as follows:

1 Plaintiff is barred from bringing this action against
2 defendant on the grounds that the "settlement contract," as
3 interpreted by plaintiff, lacks in reciprocity and mutuality.

4 EIGHTEENTH AFFIRMATIVE DEFENSE

5 (Ambiguity)

6 58. Further answering said complaint, and as an eighteenth
7 separate and affirmative defense thereto, defendant realleges and
8 incorporates by reference herein each and every allegation
9 contained above and alleges as follows:

10 Plaintiff is barred from bringing this action against
11 defendant on the grounds that the "settlement contract" in
12 ambiguous and incapable of enforcement.

13 NINETEENTH AFFIRMATIVE DEFENSE

14 (Lack of Adequate Consideration)

15 59. Further answering said complaint, and as a nineteenth
16 separate and affirmative defense thereto, defendant realleges and
17 incorporates by reference herein each and every allegation
18 contained above and alleges as follows:

19 Plaintiff is barred from bringing this action against
20 defendant on the grounds that the "settlement contract" is not
21 supported by adequate consideration.

22 TWENTIETH AFFIRMATIVE DEFENSE

23 (Unconscionability)

24 60. Further answering said complaint, and as a twentieth
25 separate and affirmative defense thereto, defendant realleges and
26 incorporates by reference herein each and every allegation
27 contained above and alleges as follows:

28 Plaintiff is barred from bringing this action against
defendant on the grounds that the "settlement contract" is

1 unconscionable.

2 TWENTY-FIRST AFFIRMATIVE DEFENSE

3 (Adhesion)

4 61. Further answering said complaint, and as a twenty-first
5 separate and affirmative defense thereto, defendant realleges and
6 incorporates by reference herein each and every allegation
7 contained above and alleges as follows:

8 Plaintiff is barred from bringing this action against
9 defendant on the grounds that the "settlement contract" is a
10 contract of adhesion. Defendant had no realistic choice as to
11 the "settlement contract's" form.

12 TWENTY-SECOND AFFIRMATIVE DEFENSE

13 (Hardship)

14 62. Further answering said complaint, and as a twenty-
15 second separate and affirmative defense thereto, defendant
16 realleges and incorporates by reference herein each and every
17 allegation contained above and alleges as follows:

18 Plaintiff is barred from bringing this action against
19 defendant on the grounds that the "settlement contract" would
20 work an unfair hardship on defendant.

21 TWENTY-THIRD AFFIRMATIVE DEFENSE

22 (Offset)

23 63. Further answering said complaint, and as a twenty-third
24 separate and affirmative defense thereto, defendant realleges and
25 incorporates by reference herein each and every allegation
26 contained above and alleges as follows:

27 Any damages that plaintiff has suffered in consequence
28 of the alleged conduct is exceeded by the damages suffered by
defendant, in consequence of the misconduct of plaintiff, and

1 plaintiff's agents' acts of "fair game," and therefore plaintiff
2 should take nothing.

3 TWENTY-FOURTH AFFIRMATIVE DEFENSE

4 (Liquidated Damages Act As Penalty)

5 64. Further answering said complaint, and as a twenty-
6 fourth separate and affirmative defense thereto, defendant
7 realleges and incorporates by reference herein each and every
8 allegation contained above and alleges as follows:

9 Plaintiff is barred from bringing this action against
10 defendants on the grounds that the "settlement contract's"
11 provision of liquidated damages is not an approximation of
12 damage, but is intended to act and does act as a penalty.

13 TWENTY-FIFTH AFFIRMATIVE DEFENSE

14 (First Amendment - Religion)

15 65. Further answering said complaint, and as a twenty-fifth
16 separate and affirmative defense thereto, defendant realleges and
17 incorporates by reference herein each and every allegation
18 contained above and alleges as follows:

19 Plaintiff is barred from bringing this action against
20 defendant on the grounds that the "settlement contract" violates
21 defendant's right to freedom of religion guaranteed by the state
22 and federal constitutions.

23 TWENTY-SIXTH AFFIRMATIVE DEFENSE

24 (First Amendment - Speech)

25 66. Further answering said complaint, and as a twenty-sixth
26 separate and affirmative defense thereto, defendant realleges and
27 incorporates by reference herein each and every allegation
28 contained above and alleges as follows:

Plaintiff is barred from bringing this action against

1 defendant on the grounds that the "settlement contract" violates
2 defendant's right to freedom of speech guaranteed by the state
3 and federal constitutions.

4 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

5 (First Amendment - Press)

6 67. Further answering said complaint, and as a twenty-
7 seventh separate and affirmative defense thereto, defendant
8 realleges and incorporates by reference herein each and every
9 allegation contained above and alleges as follows:

10 Plaintiff is barred from bringing this action against
11 defendant on the grounds that the "settlement contract" violates
12 defendant's right to freedom of press guaranteed by the state and
13 federal constitutions.

14 TWENTY-EIGHTH AFFIRMATIVE DEFENSE

15 (First Amendment - Association)

16 68. Further answering said complaint, and as a twenty-
17 eighth separate and affirmative defense thereto, defendant
18 realleges and incorporates by reference herein each and every
19 allegation contained above and alleges as follows:

20 Plaintiff is barred from bringing this action against
21 defendant on the grounds that the "settlement contract" violates
22 defendant's right to freedom of association guaranteed by the
23 state and federal constitutions.

24 TWENTY-NINTH AFFIRMATIVE DEFENSE

25 (Privacy)

26 69. Further answering said complaint, and as a twenty-ninth
27 separate and affirmative defense thereto, defendant realleges and
28 incorporates by reference herein each and every allegation
contained above and alleges as follows:

1 Plaintiff is barred from bringing this action against
2 defendant on the grounds that the "settlement contract" violates
3 defendant's right of privacy guaranteed by the state and federal
4 constitutions.

5 THIRTIETH AFFIRMATIVE DEFENSE

6 (Implied Covenant of Good Faith and Fair Dealing)

7 70. Further answering said complaint, and as a thirtieth
8 separate and affirmative defense thereto, defendant realleges and
9 incorporates by reference herein each and every allegation
10 contained above and alleges as follows:

11 Plaintiff is barred from bringing this action against
12 defendant on the grounds that the conduct of plaintiff and its
13 agents violates the implied covenant of good faith and fair
14 dealing.

15 THIRTY-FIRST AFFIRMATIVE DEFENSE

16 (Justification - Defense of Another, Interests
17 of Third Persons, and the Public)

18 71. Further answering said complaint, and as a thirty-first
19 separate and affirmative defense thereto, defendant realleges and
20 incorporates by reference herein each and every allegation
21 contained above and alleges as follows:

22 At all relevant times, the acts of defendant were
23 privileged and justified because they were done in the defense of
24 others, the interests of third parties, the interests of justice,
25 and the interests of the public.

26 THIRTY-SECOND AFFIRMATIVE DEFENSE

27 (Res Judicata)

28 72. Further answering said complaint, and as a thirty-
second separate and affirmative defense thereto, defendant

1 realleges and incorporates by reference herein each and every
2 allegation contained above and alleges as follows:

3 Plaintiff's complaint, and plaintiff's claims for equitable
4 relief and for damages, are barred by the doctrine of res
5 judicata.

6 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

7 **(Collateral Estoppel)**

8 73. Further answering said complaint, and as a thirty-third
9 separate and affirmative defense thereto, defendant realleges and
10 incorporates by reference herein each and every allegation
11 contained above and alleges as follows:

12 Plaintiff's complaint, and plaintiff's claims for equitable
13 relief and for damages, are barred by the doctrine of collateral
14 estoppel.

15 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

16 **(Failure to Mitigate Damages)**

17 74. Further answering said complaint, and as a thirty-
18 fourth separate and affirmative defense thereto, defendant
19 realleges and incorporates by reference herein each and every
20 allegation contained above and alleges as follows:

21 Plaintiff, and/or its agent, and/or its counsel, failed to
22 take proper and reasonable steps to avoid or mitigate the damages
23 alleged, and to the extent of such failure to mitigate or to
24 avoid, damages allegedly incurred by plaintiff, if any, should be
25 reduced accordingly.

26 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

27 **(Action Barred By Equity, California Civil Code**
28 **and United States Code Provisions)**

75. Further answering said complaint, and as a thirty-fifth

1 separate and affirmative defense thereto, defendant realleges and
2 incorporates by reference herein each and every allegation
3 contained above and alleges as follows:

4 Plaintiff is barred from judicial relief by the general
5 principles of equity and the specific provisions of Part IV of
6 the California Civil Code, including but not limited to §§ 3512,
7 3517, 3519, 3524, (without any admission of wrongdoing by
8 defendant) and 3533; and Federal Code provisions.

9 THIRTY-SIXTH AFFIRMATIVE DEFENSE

10 (Void As Against Public Policy)

11 76. Further answering said complaint, and as a thirty-sixth
12 separate and affirmative defense thereto, defendant realleges and
13 incorporates by reference herein each and every allegation
14 contained above and alleges as follows:

15 Plaintiff is barred from judicial relief because the
16 "settlement contract" is void as against public policy.

17 THIRTY-SEVENTH AFFIRMATIVE DEFENSE

18 (The Settlement Contract Cannot Be Specifically Enforced)

19 77. Further answering said complaint, and as a thirty-
20 seventh separate and affirmative defense thereto, defendant
21 realleges and incorporates by reference herein each and every
22 allegation contained above and alleges as follows:

23 Plaintiff is barred from judicial relief because the
24 "settlement contract" cannot be specifically enforced.

25 THIRTY-EIGHTH AFFIRMATIVE DEFENSE

26 (The Settlement Contract Cannot Be Specifically Performed)

27 78. Further answering said complaint, and as a thirty-
28 eighth separate and affirmative defense thereto, defendant
realleges and incorporates by reference herein each and every

1 allegation contained above and alleges as follows:

2 Plaintiff is barred from judicial relief because the
3 "settlement contract" cannot be specifically performed.

4 THIRTY-NINTH AFFIRMATIVE DEFENSE

5 (Due Process)

6 79. Further answering said complaint, and as a thirty-ninth
7 separate and affirmative defense thereto, defendant realleges and
8 incorporates by reference herein each and every allegation
9 contained above and alleges as follows:

10 Plaintiff is barred from judicial relief because the
11 "settlement contract" deprives defendant, third parties and the
12 public of due process of law as protected by the state
13 constitution and by the Fifth and Fourteenth Amendments to the
14 federal constitution.

15 FORTIETH AFFIRMATIVE DEFENSE

16 (Equal Protection)

17 80. Further answering said complaint, and as a fortieth
18 separate and affirmative defense thereto, defendant realleges and
19 incorporates by reference herein each and every allegation
20 contained above and alleges as follows:

21 Plaintiff is barred from judicial relief because the
22 "settlement contract" deprives defendant third parties and the
23 public of equal protection of law as guaranteed by the state
24 constitution and by the federal constitution.

25 FORTY-FIRST AFFIRMATIVE DEFENSE

26 (Right to Counsel)

27 81. Further answering said complaint, and as a forty-first
28 separate and affirmative defense thereto, defendant realleges and
incorporates by reference herein each and every allegation

1 contained above and alleges as follows:

2 Plaintiff is barred from judicial relief because the
3 "settlement contract" deprives defendant of his right to counsel
4 as protected by the state constitution and by the Sixth Amendment
5 to the federal constitution.

6 **FORTY-SECOND AFFIRMATIVE DEFENSE**

7 **(Public Domain)**

8 82. Further answering said complaint, and as a forty-second
9 separate and affirmative defense thereto, defendant realleges and
10 incorporates by reference herein each and every allegation
11 contained above and alleges as follows:

12 Plaintiff is barred from judicial relief because the
13 information that defendant is accused of disclosing is in the
14 public domain.

15 **FORTY-THIRD AFFIRMATIVE DEFENSE**

16 **(Privilege)**

17 83. Further answering said complaint, and as a forty-third
18 separate and affirmative defense thereto, defendant realleges and
19 incorporates by reference herein each and every allegation
20 contained above and alleges as follows:

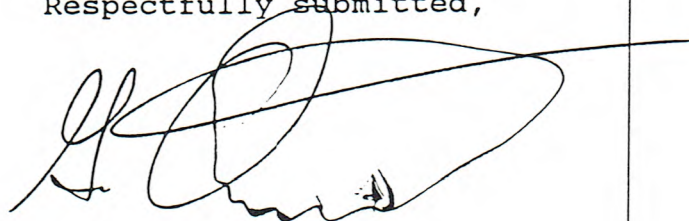
21 Plaintiff is barred from judicial relief because the acts
22 that defendant is accused of having committed are privileged.

23 **WHEREFORE**, Defendant Armstrong prays for relief as follows:

- 24 1. That CSI takes nothing by its complaint;
- 25 2. That Armstrong recover his costs of suit herein;
- 26 3. That Armstrong recover his attorney's fees and costs of
27 defending the suit herein;
- 28 4. That the Court award such further relief as it may deem
proper.

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Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to be 'G. Armstrong', written over a horizontal line.

DATED: September 22, 1995

GERALD ARMSTRONG

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 715 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents:

GERALD ARMSTRONG'S SECOND AMENDED ANSWER

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

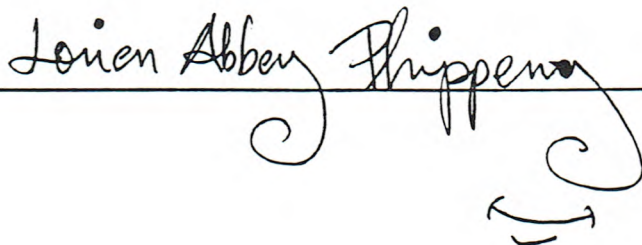
ANDREW H. WILSON, ESQ.
ESQ. Wilson, Ryan & Campilongo
115 Sansome Street, 4th Floor
San Francisco, CA 94104

LAURIE J. BARTILSON, ESQ.
Moxon & Bartilson
6255 Sunset Boulevard
Suite 2000
Los Angeles, CA 90028

[x](By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[x](State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: September 25, 1995


A handwritten signature, "Louisa Abbey Thippens", is written in cursive over a horizontal line. Below the signature, there is a small, stylized mark that resembles a double arrow or a flourish.

FILED

JUN 22 1984
JUL 1 1984

Rosie M. Hart
BY ROSIE M. HART, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Plaintiff,

vs.

GERALD ARMSTRONG,

Defendant.

MARY SUE HUBBARD,

Intervenor.

No. C. 420153

MEMORANDUM OF
INTENDED DECISION

In this matter heretofore taken under submission, the
Court announces its intended decision as follows:

As to the tort causes of action, plaintiff, and plaintiff
in intervention are to take nothing, and defendant is entitled
to Judgment and costs.

As to the equitable actions, the court finds that neither
plaintiff has clean hands, and that at least as of this time,
are not entitled to the immediate return of any document or
objects presently retained by the court clerk. All exhibits

1 received in evidence or marked for identification, unless
2 specifically ordered sealed¹, are matters of public record and
3 shall be available for public inspection or use to the same
4 extent that any such exhibit would be available in any other
5 lawsuit. In other words they are to be treated henceforth no
6 differently than similar exhibits in other cases in Superior
7 Court. Furthermore, the "inventory list and description," of
8 materials turned over by Armstrong's attorneys to the court,
9 shall not be considered or deemed to be confidential, private,
10 or under seal.

11 All other documents or objects presently in the possession
12 of the clerk (not marked herein as court exhibits) shall be
13 retained by the clerk, subject to the same orders as are
14 presently in effect as to sealing and inspection, until such
15 time as trial court proceedings are concluded as to the severed
16 cross complaint. For the purposes of this Judgment, conclusion
17 will occur when any motion for a new trial has been denied, or
18 the time within such a motion must be brought has expired
19 without such a motion being made. At that time, all documents
20 neither received in evidence, nor marked for identification
21 only, shall be released by the clerk to plaintiff's
22 representatives. Notwithstanding this order, the parties may
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24
25 1. Exhibits in evidence No. 500-40; JJJ; KKK; LLL; MMM;
26 NNN; OOO; PPP; QQQ; RRR; and 500-QQQQ.

27 Exhibits for identification only No. JJJJ; Series
28 500-DDDD, EEEE, FFFF, GGGG, HHHH, IIII, NNNN-1, OOOO, ZZZZ,
CCCCC, GGGGG, IIIII, KKKKK, LLLLL, OOOOO, PPPPP, QQQQQ, BBBBEE,
OOOOOO, BBBBEE.

1 at any time by written stipulation filed with the clerk obtain
2 release of any or all such unused materials.

3 Defendant and his counsel are free to speak or communicate
4 upon any of Defendant Armstrong's recollections of his life as
5 a Scientologist or the contents of any exhibit received in
6 evidence or marked for identification and not specifically
7 ordered sealed. As to all documents, and other materials held
8 under seal by the clerk, counsel and the defendant shall remain
9 subject to the same injunctions as presently exist, at least
10 until the conclusion of the proceedings on the cross complaint.
11 However, in any other legal proceedings in which defense
12 counsel, or any of them, is of record, such counsel shall have
13 the right to discuss exhibits under seal, or their contents, if
14 such is reasonably necessary and incidental to the proper
15 representation of his or her client.

16 Further, if any court of competent jurisdiction orders
17 defendant or his attorney to testify concerning the fact of any
18 such exhibit, document, object, or its contents, such testimony
19 shall be given, and no violation of this order will occur.
20 Likewise, defendant and his counsel may discuss the contents of
21 any documents under seal or of any matters as to which this
22 court has found to be privileged as between the parties hereto,
23 with any duly constituted Governmental Law Enforcement Agency
24 or submit any exhibits or declarations thereto concerning such
25 document or materials, without violating any order of this
26 court.

27 ///

28 ///

1 This court will retain jurisdiction to enforce, modify,
2 alter, or terminate any injunction included within the
3 Judgment.

4 Counsel for defendant is ordered to prepare, serve, and
5 file a Judgment on the Complaint and Complaint in Intervention,
6 and Statement of Decision if timely and properly requested,
7 consistent with the court's intended decision.

8
9 Discussion

10 The court has found the facts essentially as set forth in
11 defendant's trial brief, which as modified, is attached as an
12 appendix to this memorandum. In addition the court finds that
13 while working for L.R. Hubbard (hereinafter referred to as
14 LRH), the defendant also had an informal employer-employee
15 relationship with plaintiff Church, but had permission and
16 authority from plaintiffs and LRH to provide Omar Garrison with
17 every document or object that was made available to Mr.
18 Garrison, and further, had permission from Omar Garrison to
19 take and deliver to his attorneys the documents and materials
20 which were subsequently delivered to them and thenceforth into
21 the custody of the County Clerk.

22 Plaintiff Church has made out a prima facie case of
23 conversion (as bailee of the materials), breach of fiduciary
24 duty, and breach of confidence (as the former employer who
25 provided confidential materials to its then employee for
26 certain specific purposes, which the employee later used for
27 other purposes to plaintiff's detriment). Plaintiff Mary Jane
28 Hubbard has likewise made out a prima facie case of conversion

1 and invasion of privacy (misuse by a person of private matters
2 entrusted to him for certain specific purposes only).

3 While defendant has asserted various theories of defense,
4 the basic thrust of his testimony is that he did what he did,
5 because he believed that his life, physical and mental well
6 being, as well as that of his wife were threatened because the
7 organization was aware of what he knew about the life of LRH,
8 the secret machinations and financial activities of the Church,
9 and his dedication to the truth. He believed that the only way
10 he could defend himself, physically as well as from harassing
11 lawsuits, was to take from Omar Garrison those materials which
12 would support and corroborate everything that he had been
13 saying within the Church about LRH and the Church, or refute
14 the allegations made against him in the April 22 Suppressive
15 Person Declare. He believed that the only way he could be sure
16 that the documents would remain secure for his future use was
17 to send them to his attorneys, and that to protect himself, he
18 had to go public so as to minimize the risk that LRH, the
19 Church, or any of their agents would do him physical harm.

20 This conduct if reasonably believed in by defendant and
21 engaged in by him in good faith, finds support as a defense to
22 the plaintiff's charges in the Restatements of Agency, Torts,
23 and case law.

24 Restatement of Agency, Second, provides:

25 "Section 395f: An agent is privileged to reveal
26 information confidentially acquired by him in the course
27 of his agency in the protection of a superior interest of
28 himself or a third person.

1 "Section 418: An agent is privileged to protect
2 interests of his own which are superior to those of the
3 principal, even though he does so at the expense of the
4 principal's interest or in disobedience to his orders."

5 Restatement of torts, Second, section 271:

6 "One is privileged to commit an act which would
7 otherwise be a trespass to or a conversion of a chattel in
8 the possession of another, for the purpose of defending
9 himself or a third person against the other, under the
10 same conditions which would afford a privilege to inflict
11 harmful or offensive contact upon the other for the same
12 purpose."

13 The Restatement of Torts, Second, section 652a, as well as
14 case law, make it clear that not all invasions of privacy are
15 unlawful or tortious. It is only when the invasion is
16 unreasonable that it becomes actionable. Hence, the trier of
17 fact must engage in a balancing test, weighing the nature and
18 extent of the invasion, as against the purported justification
19 therefore to determine whether in a given case, the particular
20 invasion or intrusion was unreasonable.

21 In addition the defendant has asserted as a defense the
22 principal involved in the case of Willig v. Gold, 75
23 Cal.App.2d, 809, 814, which holds that an agent has a right or
24 privilege to disclose his principal's dishonest acts to the
25 party prejudicially affected by them.

26 Plaintiff Church has asserted and obviously has certain
27 rights arising out of the First Amendment. Thus, the court
28 cannot, and has not, inquired into or attempted to evaluate the

merits, accuracy, or truthfulness of Scientology or any of its precepts as a religion. First Amendment rights, however, cannot be utilized by the Church or its members, as a sword to preclude the defendant, whom the Church is suing, from defending himself. Therefore, the actual practices of the Church or its members, as it relates to the reasonableness of the defendant's conduct and his state of mind are relevant, admissible, and have been considered by the court.

As indicated by its factual findings, the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and Howard Schomer to be credible, extremely persuasive, and the defense of privilege or justification established and corroborated by this evidence. Obviously, there are some discrepancies or variations in recollections, but these are the normal problems which arise from lapse of time, or from different people viewing matters or events from different perspectives. In all critical and important matters, their testimony was precise, accurate, and rang true. The picture painted by these former dedicated Scientologists, all of whom were intimately involved with LRH, or Mary Jane Hubbard, or of the Scientology Organization, is on the one hand pathetic, and on the other, outrageous. Each of these persons literally gave years of his or her respective life in support of a man, LRH, and his ideas. Each has manifested a waste and loss or frustration which is incapable of description. Each has broken with the movement for a variety of reasons, but at the same time, each is, still bound by the knowledge that the Church has

1 in its possession his or her most inner thoughts and
2 confessions, all recorded in "pre-clear (P.C.) folders" or
3 other security files of the organization, and that the Church
4 or its minions is fully capable of intimidation or other
5 physical or psychological abuse if it suits their ends. The
6 record is replete with evidence of such abuse.

7 In 1970 a police agency of the French Government conducted
8 an investigation into Scientology and concluded, "this sect,
9 under the pretext of 'freeing humans' is nothing in reality but
10 a vast enterprise to extract the maximum amount of money from
11 its adepts by (use of) pseudo-scientific theories, by (use of)
12 'auditions' and 'stage settings' (lit. to create a theatrical
13 scene') pushed to extremes (a machine to detect lies, its own
14 particular phraseology . . .), to estrange adepts from their
15 families and to exercise a kind of blackmail against persons
16 who do not wish to continue with this sect."² From the
17 evidence presented to this court in 1984, at the very least,
18 similar conclusions can be drawn. In addition to violating and
19 abusing its own members civil rights, the organization over the
20 years with its "Fair Game" doctrine has harassed and abused
21 those persons not in the Church whom it perceives as enemies.
22 The organization clearly is schizophrenic and paranoid, and
23 this bizarre combination seems to be a reflection of its
24 founder LRH. The evidence portrays a man who has been
25 virtually a pathological liar when it comes to his history,
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27

28 2. Exhibit 500-HHHHH.

1 background, and achievements. The writings and documents in
2 evidence additionally reflect his egoism, greed, avarice, lust
3 for power, and vindictiveness and aggressiveness against
4 persons perceived by him to be disloyal or hostile. At the
5 same time it appears that he is charismatic and highly capable
6 of motivating, organizing, controlling, manipulating, and
7 inspiring his adherents. He has been referred to during the
8 trial as a "genius," a "revered person," a man who was "viewed
9 by his followers in awe." Obviously, he is and has been a very
10 complex person, and that complexity is further reflected in his
11 alter ego, the Church of Scientology. Notwithstanding
12 protestations to the contrary, this court is satisfied that LRH
13 runs the Church in all ways through the Sea Organization, his
14 role of Commodore, and the Commodore's Messengers.³ He has, of
15 course, chosen to go into "seclusion," but he maintains contact
16 and control through the top messengers. Seclusion has its
17 light and dark side too. It adds to his mystique, and yet
18 shields him from accountability and subpoena or service of
19 summons.

20 LRH's wife, Mary Sue Hubbard is also a plaintiff herein.
21 On the one hand she certainly appeared to be a pathetic
22 individual. She was forced from her post as Controller,
23 convicted and imprisoned as a felon, and deserted by her
24 husband. On the other hand her credibility leaves much to be
25 desired. She struck the familiar pose of not seeing, hearing,
26

27 3. See Exhibit K: Flag Order 3729 - 15 September 1978
28 "Commodore's Messengers."

1 or knowing any evil. Yet she was the head of the Guardian
2 Office for years and among other things, authored the infamous
3 order "GO 121669"⁴ which directed culling of supposedly
4 confidential P.C. files/folders for purposes of internal
5 security. In her testimony she expressed the feeling that
6 defendant by delivering the documents, writings, letters to his
7 attorneys, subjected her to mental rape. The evidence is clear
8 and the court finds that defendant and Omar Garrison had
9 permission to utilize these documents for the purpose of
10 Garrison's proposed biography. The only other persons who were
11 shown any of the documents were defendant's attorneys, the
12 Douglasses, the Dincalcis, and apparently some documents
13 specifically affecting LRH's son "Nibs," were shown to "Nibs."
14 The Douglasses and Dincalcises were disaffected Scientologists
15 who had a concern for their own safety and mental security, and
16 were much in the same situation as defendant. They had not
17 been declared as suppressive, but Scientology had their P.C.
18 folders, as well as other confessions, and they were extremely
19 apprehensive. They did not see very many of the documents, and
20 it is not entirely clear which they saw. At any rate Mary Sue
21 Hubbard did not appear to be so much distressed by this fact,
22 as by the fact that Armstrong had given the documents to
23 Michael Flynn, whom the Church considered its foremost
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28 4. Exhibit AAA.

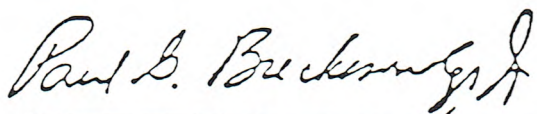
1 lawyer-enemy.⁵ However, just as the plaintiffs have First
2 Amendment rights, the defendant has a Constitutional right to
3 an attorney of his own choosing. In legal contemplation the
4 fact that defendant selected Mr. Flynn rather than some other
5 lawyer cannot by itself be tortious. In determining whether
6 the defendant unreasonably invaded Mrs. Hubbard's privacy, the
7 court is satisfied the invasion was slight, and the reasons and
8 justification for defendant's conduct manifest. Defendant was
9 told by Scientology to get an attorney. He was declared an
10 enemy by the Church. He believed, reasonably, that he was
11 subject to "fair game." The only way he could defend himself,
12 his integrity, and his wife was to take that which was
13 available to him and place it in a safe harbor, to wit, his
14 lawyer's custody. He may have engaged in overkill, in the
15 sense that he took voluminous materials, some of which appear
16 only marginally relevant to his defense. But he was not a
17 lawyer and cannot be held to that precise standard of judgment.
18 Further, at the time that he was accumulating the material, he
19 was terrified and undergoing severe emotional turmoil. The
20 court is satisfied that he did not unreasonably intrude upon
21 Mrs. Hubbard's privacy under the circumstances by in effect
22 simply making his knowledge that of his attorneys. It is, of
23 course, rather ironic that the person who authorized G.O. order
24 121669 should complain about an invasion of privacy. The
25

26 5. "No, I think my emotional distress and upset is the
27 fact that someone took papers and materials without my
28 authorization and then gave them to your Mr. Flynn."
Reporter's Transcript, p. 1006.

1 practice of culling supposedly confidential "P.C. folders or
2 files" to obtain information for purposes of intimidation
3 and/or harassment is repugnant and outrageous. The Guardian's
4 Office, which plaintiff headed, was no respecter of anyone's
5 civil rights, particularly that of privacy. Plaintiff Mary Sue
6 Hubbard's cause of action for conversion must fail for the same
7 reason as plaintiff Church. The documents were all together in
8 Omar Garrison's possession. There was no rational way the
9 defendant could make any distinction.

10 Insofar as the return of documents is concerned, matters
11 which are still under seal may have evidentiary value in the
12 trial of the cross complaint or in other third party
13 litigation. By the time that proceedings on the cross
14 complaint are concluded, the court's present feeling is that
15 those documents or objects not used by that time should be
16 returned to plaintiff. However, the court will reserve
17 jurisdiction to reconsider that should circumstances warrant.

18 Dated: June 20, 1984

19 

20 PAUL G. BRECKENRIDGE, JR.
21 Judge of the Superior Court
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1
2 Appendix

3 Defendant Armstrong was involved with Scientology from
4 1969 through 1981, a period spanning 12 years. During that
5 time he was a dedicated and devoted member who revered the
6 founder, L. Ron Hubbard. There was little that Defendant
7 Armstrong would not do for Hubbard or the Organization. He
8 gave up formal education, one-third of his life, money and
9 anything he could give in order to further the goals of
10 Scientology, goals he believed were based upon the truth,
11 honesty, integrity of Hubbard and the Organization.

12 From 1971 through 1981, Defendant Armstrong was a member
13 of the Sea Organization, a group of highly trained
14 scientologists who were considered the upper echelon of the
15 Scientology organization.⁶ During those years he was placed in
16 various locations, but it was never made clear to him exactly
17 which Scientology corporation he was working for. Defendant
18 Armstrong understood that, ultimately, he was working for L.
19 Ron Hubbard, who controlled all Scientology finances,
20 personnel, and operations while Defendant was in the Sea
21 Organization.

22 Beginning in 1979 Defendant Armstrong resided at Gilman
23 Hot Springs, California, in Hubbard's "Household Unit." The
24 Household Unit took care of the personal wishes and needs of
25 Hubbard at many levels. Defendant Armstrong acted as the L.
26 Ron Hubbard Renovations In-Charge and was responsible for
27 renovations, decoration, and maintenance of Hubbard's home and
28 office at Gilman Hot Springs.

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- 1 -

1 In January of 1980 there was an announcement of a possible
2 raid to be made by the FBI or other law enforcement agencies of
3 the property. Everyone on the property was required by
4 Hubbard's representatives, the Commodore's Messengers, to go
5 through all documents located on the property and "vet" or
6 destroy anything which showed that Hubbard controlled
7 Scientology organizations, retained financial control, or was
8 issuing orders to people at Gilman Hot Springs.

9 A commercial paper shredder was rented and operated day
10 and night for two weeks to destroy hundreds of thousands of
11 pages of documents.

12 During the period of shredding, Brenda Black, the
13 individual responsible for storage of Hubbard's personal
14 belongings at Gilman Hot Springs, came to Defendant Armstrong
15 with a box of documents and asked whether they were to be
16 shredded. Defendant Armstrong reviewed the documents and found
17 that they consisted of a wide variety of documents including
18 Hubbard's personal papers, diaries, and other writings from a
19 time before he started Dianetics in 1950, together with
20 documents belonging to third persons which had apparently been
21 stolen by Hubbard or his agents. Defendant Armstrong took the
22 documents from Ms. Black and placed them in a safe location on
23 the property. He then searched for and located another twenty
24 or more boxes containing similar materials, which were poorly
25 maintained.

26 On January 8, 1980, Defendant Armstrong wrote a petition
27 to Hubbard requesting his permission to perform the research
28 for a biography to be done about his life. The petition states

1 that Defendant Armstrong had located the subject materials and
2 lists of a number of activities he wished to perform in
3 connection with the biography research.

4 Hubbard approved the petition, and Defendant Armstrong
5 became the L. Ron Hubbard Personal Relations Officer Researcher
6 (PPRO Res). Defendant claims that this petition and its
7 approval forms the basis for a contract between Defendant and
8 Hubbard. Defendant Armstrong's supervisor was then Laurel
9 Sullivan, L. Ron Hubbard's Personal Public Relations Officer.

10 During the first part of 1980, Defendant Armstrong moved
11 all of the L. Ron Hubbard Archives materials he had located at
12 Gilman Hot Springs to an office in the Church of Scientology
13 Cedars Complex in Los Angeles. These materials comprised
14 approximately six file cabinets. Defendant Armstrong had
15 located himself in the Cedars Complex, because he was also
16 involved in "Mission Corporate Category Sort-Out," a mission to
17 work out legal strategy. Defendant Armstrong was involved with
18 this mission until June of 1980.

19 It was also during this early part of 1980 that Hubbard
20 left the location in Gilman Hot Springs, California, and went
21 into hiding. Although Defendant Armstrong was advised by
22 Laurel Sullivan that no one could communicate with Hubbard,
23 Defendant Armstrong knew that the ability for communication
24 existed, because he had forwarded materials to Hubbard at his
25 request in mid-1980.

26 Because of this purported inability to communicate with
27 Hubbard, Defendant Armstrong's request to purchase biographical
28 materials of Hubbard from people who offered them for sale went

1 to the Commodore's Messenger Organization, the personal
2 representatives of Hubbard.

3 In June of 1980 Defendant Armstrong became involved in the
4 selection of a writer for the Hubbard biography. Defendant
5 Armstrong learned that Hubbard had approved of a biography
6 proposal prepared by Omar Garrison, a writer who was not a
7 member of Scientology. Defendant Armstrong had meetings with
8 Mr. Garrison regarding the writing of the biography and what
9 documentation and assistance would be made available to him.
10 As understood by Mr. Garrison, Defendant Armstrong represented
11 Hubbard in these discussions.

12 Mr. Garrison was advised that the research material he
13 would have at his disposal were Hubbard's personal archives.
14 Mr. Garrison would only undertake a writing of the biography if
15 the materials provided to him were from Hubbard's personal
16 archives, and only if his manuscript was subject to the
17 approval of Hubbard himself.

18 In October of 1980 Mr. Garrison came to Los Angeles and
19 was toured through the Hubbard archives materials that
20 Defendant Armstrong had assembled up to that time. This was an
21 important "selling point" in obtaining Mr. Garrison's agreement
22 to write the biography. On October 30, 1980, an agreement was
23 entered into between Ralston-Pilot, ncw. F/S/O Omar V.
24 Garrison, and AOSH'DK Publications of Copenhagen, Denmark, for
25 the writing of a biography of Hubbard.

26 Paragraph 10B of the agreement states that:

27 "Publisher shall use its best efforts to provide
28 Author with an office, an officer assistant and/or

1 research assistant, office supplies and any needed
2 archival and interview materials in connection with
3 the writing of the Work."

4 The "research assistant" provided to Mr. Garrison was
5 Defendant Armstrong.

6 During 1980 Defendant Armstrong exchanged correspondence
7 with Intervenor regarding the biography project. Following his
8 approval by Hubbard as biography researcher, Defendant
9 Armstrong wrote to Intervenor on February 5, 1980, advising her
10 of the scope of the project. In the letter Defendant stated
11 that he had found documents which included Hubbard's diary from
12 his Orient trip, poems, essays from his youth, and several
13 personal letters, as well as other things.

14 By letter of February 11, 1980, Intervenor responded to
15 Defendant, acknowledging that he would be carrying out the
16 duties of Biography Researcher.

17 On October 14, 1980, Defendant Armstrong again wrote to
18 Intervenor, updating her on "Archives materials" and proposing
19 certain guidelines for the handling of those materials.

20 It was Intervenor who, in early 1981, ordered certain
21 biographical materials from "Controller Archives" to be
22 delivered to Defendant Armstrong. These materials consisted of
23 several letters written by Hubbard in the 1920's and 1930's,
24 Hubbard's Boy Scout books and materials, several old Hubbard
25 family photographs, a diary kept by Hubbard in his youth, and
26 several other items.

27 Defendant Armstrong received these materials upon the
28 order of Intervenor, following his letter of October 15, 1980,

1 to her in which Defendant stated, at page 7, that there were
2 materials in the "Controller Archives" that would be helpful to
3 him in the biography research.

4 After these materials were delivered to Defendant
5 Armstrong, Intervenor was removed from her Scientology position
6 of Controller in 1981, presumably because of her conviction for
7 the felony of obstruction of justice in connection with the
8 theft of Scientology documents from various government offices
9 and agencies in Washington, D.C.

10 During the time Defendant Armstrong worked on the
11 biography project and acted as Hubbard Archivist, there was
12 never any mention that he was not to be dealing with Hubbard's
13 personal documents or that the delivery of those documents to
14 Mr. Garrison was not authorized.

15 For the first year or more of the Hubbard biography and
16 archive project, funding came from Hubbard's personal staff
17 unit at Gilman Hot Springs, California. In early 1981,
18 however, Defendant Armstrong's supervisor, Laurel Sullivan,
19 ordered him to request that funding come from what was known as
20 SEA Org Reserves. Approval for this change in funding came
21 from the SEA Org Reserves Chief and Watch Dog Committee, the
22 top Commodores Messenger Organization unit, who were Hubbard's
23 personal representatives.

24 From November of 1980 through 1981, Defendant Armstrong -
25 worked closely with Mr. Garrison, assembling Hubbard's archives
26 into logical categories, copying them and arranging the copies
27 of the Archives materials into bound volumes. Defendant
28 Armstrong made two copies of almost all documents copied for

1 Mr. Garrison - one for Mr. Garrison and the other to remain in
2 Hubbard Archives for reference or recopying. Defendant
3 Armstrong created approximately 400 binders of documents. The
4 vast majority of the documents for Mr. Garrison came from
5 Hubbard's personal Archives, of which Defendant Armstrong was
6 in charge. Materials which came from other Archives, such as
7 the Controller Archives, were provided to Defendant Armstrong
8 by Scientology staff members who had these documents in their
9 care.

10 It was not until late 1981 that Plaintiff was to provide a
11 person to assist on the biography project by providing Mr.
12 Garrison with "Guardian Office" materials, otherwise described
13 as technical materials relating to the operation of
14 Scientology. The individual appointed for this task was Vaughn
15 Young. Controller Archives and Guardian Office Archives had no
16 connection to the Hubbard Archives, which Defendant Armstrong
17 created and maintained as Hubbard's personal materials.

18 In addition to the assemblage of Hubbard's Archives,
19 Defendant Armstrong worked continually on researching and
20 assembling materials concerning Hubbard by interviewing dozens
21 of individuals, including Hubbard's living aunt, uncle, and
22 four cousins. Defendant Armstrong did a geneology study of
23 Hubbard's family and collected, assembled, and read hundreds of
24 thousands of pages of documentation in Hubbard's Archives.

25 During 1980 Defendant Armstrong remained convinced of
26 Hubbard's honesty and integrity and believed that the
27 representations he had made about himself in various
28 publications were truthful. Defendant Armstrong was devoted to

1 Hubbard and was convinced that any information which he
2 discovered to be unflattering of Hubbard or contradictory to
3 what Hubbard has said about himself, was a lie being spread by
4 Hubbard's enemies. Even when Defendant Armstrong located
5 documents in Hubbard's Archives which indicated that
6 representations made by Hubbard and the Organization were
7 untrue, Defendant Armstrong would find some means to "explain
8 away" the contradictory information.

9 Slowly, however, throughout 1981, Defendant Armstrong
10 began to see that Hubbard and the Organization had continuously
11 lied about Hubbard's past, his credentials, and his
12 accomplishments. Defendant Armstrong believed, in good faith,
13 that the only means by which Scientology could succeed in what
14 Defendant Armstrong believed was its goal of creating an
15 ethical environment on earth, and the only way Hubbard could be
16 free of his critics, would be for Hubbard and the Organization
17 to discontinue the lies about Hubbard's past, his credentials,
18 and accomplishments. Defendant Armstrong resisted any public
19 relations piece or announcement about Hubbard which the L. Ron
20 Hubbard Public Relations Bureau proposed for publication which
21 was not factual. Defendant Armstrong attempted to change and
22 make accurate the various "about the author" sections in
23 Scientology books, and further, Defendant rewrote or critiqued
24 several of these and other publications for the L. Ron Hubbard
25 Public Relations Bureau and various Scientology Organizations.
26 Defendant Armstrong believed and desired that the Scientology
27 Organization and its leader discontinue the perpetration of the

28 ///

1 massive fraud upon the innocent followers of Scientology, and
2 the public at large.

3 Because of Defendant Armstrong's actions, in late November
4 of 1981, Defendant was requested to come to Gilman Hot Springs
5 by Commodore Messenger Organization Executive, Cirrus Slevin.
6 Defendant Armstrong was ordered to undergo a "security check,"
7 which involved Defendant Armstrong's interrogation while
8 connected to a crude Scientology lie detector machine called an
9 E-meter.

10 The Organization wished to determine what materials
11 Defendant Armstrong had provided to Omar Garrison. Defendant
12 Armstrong was struck by the realization that the Organization
13 would not work with him to correct the numerous fraudulent
14 representations made to followers of Scientology and the public
15 about L. Ron Hubbard and the Organization itself. Defendant
16 Armstrong, who, for twelve years of his life, had placed his
17 complete and full trust in Mr. and Mrs. Hubbard and the
18 Scientology Organization, saw that his trust had no meaning and
19 that the massive frauds perpetrated about Hubbard's past,
20 credentials, and accomplishments would continue to be spread.

21 Less than three weeks before Defendant Armstrong left
22 Scientology, he wrote a letter to Cirrus Slevin on November 25
23 1981, in which it is clear that his intentions in airing the
24 inaccuracies, falsehoods, and frauds regarding Hubbard were
25 done in good faith. In his letter he stated as follows:

26 "If we present inaccuracies, hyperbole
27 or downright lies as fact or truth, it
28 doesn't matter what slant we give them, if

disproved the man will look, to outsiders at least, like a charlatan. This is what I'm trying to prevent and what I've been working on the past year and a half.

...

"and that is why I said to Norman that it is up to us to insure that everything which goes out about LRR is one hundred percent accurate. That is not to say that opinions can't be voiced, they can. And they can contain all the hype you want. But they should not be construed as facts. And anything stated as a fact should be documentable.

"We are in a period when 'investigative reporting' is popular, and when there is relatively easy access to documentation on a person. We can't delude ourselves I believe, if we want to gain public acceptance and cause some betterment in society, that we can get away with statements, the validity of which we don't know.

• "The real disservice to LRH, and the ultimate make-wrong is to go on assuming that everything he's ever written or said is one hundred percent accurate and publish it as such without verifying it. I'm

1 talking here about biographical or
2 non-technical writings. This only leads,
3 should any of his statements turn out to be
4 inaccurate, to a make-wrong of him, and
5 consequently his technology.

6 "That's what I'm trying to remedy and
7 prevent.

8 . . .

9 "To say that LRH is not capable of
10 hype, errors or lies is certainly ^{sic} not
11 granting him much of a beingness. To
12 continue on with the line that he has never
13 erred nor lied is counterproductive. It is
14 an unreal attitude and too far removed from
15 both the reality and people in general that
16 it would widen public unacceptance.

17 . . .

18 ". . . That is why I feel the
19 falsities must be corrected, and why we
20 must verify our facts and present them in a
21 favorable light."

22
23 The remainder of the letter contains examples of facts
24 about Hubbard which Defendant Armstrong found to be wholly
25 untrue or inaccurate and which were represented as true by the
26 Hubbards and the Scientology Organization.

27 In December of 1981 Defendant Armstrong made the decision
28 to leave the Church of Scientology. In order to continue in

1 his commitment to Hubbard and Mr. Garrison in the biography
2 project, he copied a large quantity of documents, which Mr.
3 Garrison had requested or which would be useful to him for the
4 biography. Defendant Armstrong delivered all of this material
5 to Mr. Garrison the date he left the SEA Organization and kept
6 nothing in his possession.

7 Thereafter, Defendant Armstrong maintained friendly
8 relations with Hubbard's representatives by returning to the
9 Archives office and discussing the various categories of
10 materials. In fact on February 24, 1982, Defendant Armstrong
11 wrote to Vaughn Young, regarding certain materials Mr. Young
12 was unable to locate for Omar Garrison.

13 After this letter was written, Defendant Armstrong went to
14 the Archives office and located certain materials Mr. Garrison
15 had wanted which Hubbard representatives claimed they could not
16 locate.

17 At the time Defendant Armstrong left the SEA Organization,
18 he was disappointed with Scientology and Hubbard, and also felt
19 deceived by them. However, Defendant Armstrong felt he had no
20 enemies and felt no ill will toward anyone in the Organization
21 or Hubbard, but still believed that a truthful biography should
22 be written.

23 After leaving the SEA Organization, Defendant Armstrong
24 continued to assist Mr. Garrison with the Hubbard biography
25 project. In the spring of 1982, Defendant Armstrong at Mr.
26 Garrison's request, transcribed some of his interview tapes,
27 copied some of the documentation he had, and assembled several
28 more binders of copied materials. Defendant Armstrong also set

up shelves for Mr. Garrison for all the biography research materials, worked on a cross-reference systems, and continued to do library research for the biography.

On February 18, 1982, the Church of Scientology International issued a "Suppressive Person Declare Gerry Armstrong," which is an official Scientology document issued against individuals who are considered as enemies of the Organization. Said Suppressive Person Declare charged that Defendant Armstrong had taken an unauthorized leave and that he was spreading destructive rumors about Senior Scientologists.

Defendant Armstrong was unaware of said Suppressive Person Declare until April of 1982. At that time a revised Declare was issued on April 22, 1982. Said Declare charged Defendant Armstrong with 18 different "Crimes and High Crimes and Suppressive Acts Against the Church." The charges included theft, juggling accounts, obtaining loans on money under false pretenses, promulgating false information about the Church, its founder, and members, and other untruthful allegations designed to make Defendant Armstrong an appropriate subject of the Scientology "Fair Game Doctrine." Said Doctrine allows an suppressive person to be "tricked, cheated, lied to, sued, or destroyed."

The second declare was issued shortly after Defendant Armstrong attempted to sell photographs of his wedding on board Hubbard's ship (in which Hubbard appears), and photographs belonging to some of his friends, which also included photos of L.R. Hubbard while in seclusion. Although Defendant Armstrong delivered the photographs to a Virgil Wilhite for sale, he

1 never received payment or return of his friend's photographs.
2 When he became aware that the Church had these photographs, he
3 went to the Organization to request their return. A loud and
4 boisterous argument ensued, and he eventually was told to leave
5 the premises and get an attorney.

6 From his extensive knowledge of the covert and
7 intelligence operations carried out by the Church of
8 Scientology of California against its enemies (suppressive
9 persons), Defendant Armstrong became terrified and feared that
10 his life and the life of his wife were in danger, and he also
11 feared he would be the target of costly and harassing lawsuits.
12 In addition, Mr. Garrison became afraid for the security of the
13 documents and believed that the intelligence network of the
14 Church of Scientology would break and enter his home to
15 retrieve them. Thus, Defendant Armstrong made copies of
16 certain documents for Mr. Garrison and maintained them in a
17 separate location.

18 It was thereafter, in the summer of 1982, that Defendant
19 Armstrong asked Mr. Garrison for copies of documents to use in
20 his defense and sent the documents to his attorneys, Michael
21 Flynn and Contos & Bunch.

22 After the within suit was filed on August 2, 1982,
23 Defendant Armstrong was the subject of harassment, including
24 being followed and surveilled by individuals who admitted
25 employment by Plaintiff; being assaulted by one of these
26 individuals; being struck bodily by a car driven by one of
27 these individuals; having two attempts made by said individuals
28 apparently to involve Defendant Armstrong in a freeway

1 automobile accident; having said individuals come onto
2 Defendant Armstrong's property, spy in his windows, create
3 disturbances, and upset his neighbors. During trial when it
4 appeared that Howard Schomer (a former Scientologist) might be
5 called as a defense witness, the Church engaged in a somewhat
6 sophisticated effort to suppress his testimony. It is not
7 clear how the Church became aware of defense intentions to call
8 Mr. Schomer as a witness, but it is abundantly clear they
9 sought to entice him back into the fold and prevent his
10 testimony.

FILED
RECEIVED

OCT 6 - 1995

KEENAN G. CASADY, CLERK
U.S. BANKRUPTCY COURT

AP NO:95-1164

HEARING DATE:10/06/95
HEARING TIME:11:00 AM

PLAINTIFF:CHURCH OF SCIENTOLOGY INTERNATIONAL

DEFENDANT:GERALD ARMSTRONG

COUNSEL:ANDREW H. WILSON

CAUSE OF ACTION:MOTION TO STRIKE DEFENDANT
GERALD ARMSTRONG'S AMENDED ANSWER

Shauna Rajkowski

BEFORE HEARING: _____

OFF CAL: _____

STIP: _____

SUBMITTED: _____

GRANTED: _____

AFTER HEARING: ☒ _____

CONT. TO ☐ ☐ ☐ ☐

DISMISS: ☒ _____

DENIED: ☒ _____

DEFAULT: _____

TRIAL SET FOR ☐ ☐ ☐

BRIEFS BY ☐ ☐ ☐

DISCOVERY BY ☐ ☐ ☐

TO PREPARE NOTICE _____

TO PREPARE ORDER _____

PLAINTIFF

DEFENDANT

COURT

cuw
17